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Negotiable Paper

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AMERICAN COMMERCIAL LAW SERIES

VOLUME II

THE LAW OF NEGOTIABLE PAPER

CONTAINING THE TEXT OF

THE UNIFORM NEGOTIABLE INSTRUMENTS ACT

WITH

QUESTIONS, PROBLEMS AND FORMS

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THIS SERIES OF BOOKS IS
RESPECTFULLY DEDICATED TO

PROFESSOR WILLARD EUGENE HOTCHKISS

DEAN OF NORTHWESTERN UNIVERSITY
SCHOOL OF COMMERCE
WHOSE ZEAL IN THE CAUSE OF COMMERCIAL
EDUCATION HAS BEEN A CONSTANT SOURCE OF
INSPIRATION TO THE AUTHOR

PREFACE TO THIS VOLUME.

In preparing this book the author considered the plan of setting out the Negotiable Instruments Act, section by section, following each section with an explanation and illustrations. But for several reasons it finally appeared advisable to follow the plan which has been used, giving the text of the Act in an Appendix, with frequent reference to it. This involves some repetition, but not enough to materially increase the size of the book.

The Negotiable Instruments Act has now been adopted in a great majority of the States, and this has given such uniformity to the law that a book of this sort gains more value than it might otherwise have. The States in which this uniform act is in force, are named in the note at the foot of page 40.

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THE LAW OF NEGOTIABLE PAPER.

PART I.

GENERAL NATURE AND HISTORY.

CHAPTER 1.

WHAT IS A NEGOTIABLE INSTRUMENT.

A. General Description of Negotiable Paper.

Sec. 1. TECHNICAL SIGNIFICANCE OF THE TERM "NEGOTIABLE." By the term "negotiable" we indicate that certain instruments, so described, are given by law a property by virtue of which they may be transferred by the payee therein, and his transferees successively, to vest in each succeeding transferee the title thereto, unaffected by certain defenses to which they might have been subjected in the hands of the immediate or any transferor, and to which non-negotiable paper would be subject notwithstanding such transfer; provided the transfer is made according to the rules established to govern commercial paper. And in addition to such transferability such paper has other peculiar properties, chiefly for the purpose, however, of aiding such transferability.

We cannot get a very adequate understanding of the nature of a negotiable instrument except through a detailed consideration of the subject, yet we may

hope to know at the outset in a general sort of a way what the term negotiability means. It at once suggests the idea of *transferability,* and that is indeed its most important and governing characteristic. It is a principle of the law of contract, that contractual rights, except rights for personal services, may be *assigned* to another; but they cannot be *negotiated* unless put in a certain form. If put in that form, they may be negotiated simply because the law has so established it for the conveniences of trade.

When one makes a contract with another whereby he secures, or seems to have secured, a certain right, as for instance, to have a salary paid him upon a certain date, the law permits him to assign that right to another. This cannot injure the debtor, for the assignment is in effect no more than a direction by the creditor for the debtor to pay the salary to another person; the contract which exists between the employer and employee is unaffected in its obligations and duties. Suppose, however, it happens that the debtor (the employer) has defenses or counterclaims which he may set up against the claim for such salary, as, that the employee has been advanced a part of it, or that he has not performed the services. It would not be just to permit the employee by selling his claim, or apparent claim, to prevent the employer to set up his defense or counterclaims, for the simple reason that such assignment was not contemplated by the parties as an object of the contract. It was not contemplated by them that a purchaser of the debtor's promise could take that promise without reference to the transaction out of which

it arose. The employer did not mean to consent that he would pay the salary whether earned or not, whether he has counterclaims or not, by reason of its assignment to a stranger, leaving the employer to his perhaps doubtful, and at any rate, circuitous, remedy against the employee. The law therefore says that though rights of this sort may be assigned, yet they must be taken in reference to the transaction out of which they arise. The assignee must step into the assignor's shoes and can claim no larger rights than that assignor could claim.

Yet for special reasons, it may be the desire of this employer and this employee to create a form of obligation which may pass upon its face for its full face value, upon which the apparent debtor shall have in effect written: "This promise of mine, while subject to defenses so long as not transferred, is put in this form in order that a transferee for value and in good faith, may take it without reference to the transaction out of which it arose. I hereby authorize my seeming creditor to separate this promise from his obligation, and it need not concern a purchaser what was given, or whether anything was given, so long as he does not know when he purchases this promise that I have any defenses against its enforcement. I have put my promise in this form so that my promisee may by selling it virtually separate it from and make it independent of his corresponding obligation to me." [1]

1. There are, however, some few unusual defenses which may be set up against even the innocent purchaser of a negotiable instrument, as we shall note hereafter.

In order to accomplish this result, and give to promises a quasi-monetary value, that is, to make them instruments of credit, the law provides certain forms, which indicate, when adopted by a party, that he means and contemplates their transfer by the promisee or holder, and this is the reason why we came to have negotiable instruments. But a great body of rules has grown up which governs the drawing of such instruments and governs their transfer.

Inasmuch as the assignment of rights under a contract is not contemplated except incidentally by the parties, neither party need question whether there has been any assignment and is not affected by any assignment until he has received *notice* of the assignment. Thus if after assignment of a salary by an employee, the employer, having no notice of such assignment, pays it to the employee, he cannot be made to pay it over again to the assignee. But the maker of negotiable paper has put his promise in that form so that it may be negotiated if desired, and he must always act with that possibility in mind. Consequently no notice need be given him, and he must protect himself by always seeing to it that the party to whom he pays money has in his possession the paper which evidences the liability, properly indorsed, and if he pays that paper before maturity he must take it up, lest it be further negotiated.

We may take another illustration to make the paragraph plainer:

A, a jeweler, has sold and delivered to B a stone, known to him to be a topaz worth a few dollars, but which he has fraudulently represented to be a rough diamond, worth $500.00, and for which B, relying on the representation, has agreed to pay him

$500.00. We may suppose that B has not put his promise in writing, or that if he has done so, the writing does not contain the elements established by custom and law as indicative of the parties' intent to make the contract negotiable. Now the law permits A to transfer his rights under a contract of this sort and this transfer is called an *assignment*. A accordingly does assign to C, who knows nothing of the fraud and who pays A $500. B, however, learning of the fraud, can make his defense against C as readily as he could have done against A, for though A could transfer his rights under such a contract, he could transfer no more than his rights. C stands in A's shoes. But let us suppose that when B purchased and obtained the stone, he had given a promissory note to A in the sum of $500, containing all of the elements required to make an instrument negotiable, and that before its maturity A had sold the note for value to C, who was ignorant of the fraud. Under this assumption B cannot make the defense against C that he could have made against A. A can by negotiation transfer a better title than he had. In other words, putting the obligation in negotiable form may be said to separate and set it apart from the rest of the transaction for purposes of negotiability.

Negotiable instruments differ from other simple contracts in this threefold manner:

First: In the quality of their transferability as indicated;

Second: In the fact that a consideration will be presumed until the contrary is shown;

Third: In the fact that three days of *grace* were allowed by the common law, meaning that the

instrument could not be sued on until three days had elapsed after the date named in it for its maturity. But this has been abolished by statute.

Let us now consider certain particular instruments to discover whether the law impresses upon them the property of negotiability. The chief of these, we will find, are promissory notes, bills of exchange, and checks; the law merchant being sometimes referred to as the law of bills, notes, and checks. But even such instruments are not negotiable unless drawn according to the rules established —containing all of the elements of negotiability hereinafter discussed. Yet it does not follow that because they may be non-negotiable, that they are for that reason ineffective as contracts. Thus we shall hereafter see that a promissory note payable when one becomes of age is non-negotiable, but it may well be the expression of a good contract between the parties.

B. Negotiability of Various Instruments Considered.

(a) *The instruments which are negotiable by and subject to the negotiable instruments law or law merchant.*

Sec. 2. PROMISSORY NOTES. "A negotiable promissory note within the meaning of this act is an unconditional promise in writing, made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to the bearer. When

a note is drawn to the maker's own order, it is not complete until indorsed by him."[2]

A promissory note, as the name indicates, is the expression of a promise. To be valid as a contract between the parties, there must be all the essential elements necessary to the formation of a contract. To be a negotiable instrument, it must contain other elements. What those elements are is indicated in the definition above, but as they are hereafter more particularly discussed, they will not be further noticed here.

The parties to a negotiable promissory note are: the maker, who is the promisor, and the payee, or the one to whom the promise to pay is made. But the payee may be described as "the bearer," in which event the instrument may be transferred with or without indorsement. If the payee is named he must indorse, and he is then called an indorser, as are all other subsequent transferors who place their names on the back of the instrument.

The power to evidence a debt in the form of a negotiable promissory note secures to one a better credit than perhaps he could otherwise obtain. For it may in any particular instance enable his creditor to immediately realize on the debt by a sale to another, who purchasing before maturity and with no knowledge of any defense against the note, knows that he can enforce it according to its tenor, restrained only by the insolvency of both the maker and the payee, who is now indorser, and even this restraint would be removed were the note adequately

2. Uniform Negotiable Instruments Act, Sec. 184. (Appendix A.)

secured. And this advantage of securing credit that might not in a particular case be otherwise obtainable, comes of the fact that a promissory note has some of the attributes of *money*, and to a limited extent, may serve in place thereof. And in a suit upon a promissory note it is not necessary to prove the consideration, that is, the transaction out of which it arose, unless a defense is made denying consideration.

Forms of negotiable promissory notes are set out in Appendix B.

Sec. 3. BILLS OF EXCHANGE. "A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money, to order or to bearer."[3]

A bill of exchange is an *order* drawn by one person, in favor of another upon a third. To be negotiable it must contain the elements indicated in the definition, but as these are discussed hereafter, they need not be further noticed here.

There are two sorts of bills of exchange, foreign and inland. "An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill." The importance of dlstinguishing between foreign and inland bills will appear later herein.

3. Uniform Negotiable Instruments Act, Secs. 126-131.

The party who makes the bill of exchange is called the drawer; the person in whose favor the order is made is called the payee; the party upon whom the order is made is called the drawee; if he accepts he is called the acceptor, and he is not liable upon the instrument until he does accept. The instrument may be indorsed either before or after acceptance.

Bills of exchange are sometimes drawn in "sets." This is usually true only of foreign bills drawn on distant parties, and means that there are several papers, called "parts," usually three, similarly drawn, numbered consecutively, and referring to each other; and altogether constituting only one bill. The purpose of drawing a bill in a set is to insure the prompt arrival of the bill at its destination. This is accomplished by sending each part separately. The parties are protected from becoming liable on all parts by the fact that each refers to the others, and their outstanding existence is thereby made known. If the drawee accepts one part he accepts the bill, and should not write his acceptance on more than one part, for he may become thereby liable to pay the bill to purchasers of the various parts. So in paying the bill he should take up the accepted part. The idea of drawing bills in sets is that any part may be treated as the bill of exchange; if any part is accepted, that is an acceptance of the bill; if any accepted part is indorsed, that is an indorsement of the bill; if any part is paid or otherwise discharged, that is a payment or other discharge of the bill. There is no especial danger in drawing a bill in parts if the rules are complied with; but by careless treat-

ment of the various parts, a two or three fold liability might be incurred.

The right to draw an instrument in the form of a bill of exchange, given by the law this property of negotiability, gives one, as in the case of promissory notes, and for similar reasons, a better means of securing credit than he might otherwise have, and that springs from the fact that the bill of exchange, like the promissory note, has a quasi-monetary value, and the liability of several parties, primary, or secondary, may go to support its credit. But it also has the great advantage of serving to adjust accounts or draw credit from one place to another without the actual transfer of funds.

To illustrate some uses of the bill of exchange, we may suppose these situations:

A, being in immediate need of funds, and being informed by B, to whom he has applied for a loan, that B will be able to get the money for him if the security or credit furnished is satisfactory, thereupon draws a bill of exchange on C, a business friend, requesting C to accept it, and advising C that he, A, will have ample funds to pay the bill before it matures. C thereupon accepts the bill. By means of C's acceptance whereby C loans A his credit, A is thus enabled to secure from B the money needed. This bill may pass through a number of hands before it matures, being supported by the credit of C, and of A, and of every one indorsing it. Or, Again;

A is B's creditor and C's debtor. He draws a bill of exchange on B in favor of C. B accepts this and thus A pays his account without any transfer of funds. Again;

A has a place of business in Chicago, and often finds it necessary to transfer funds to parties living in or around New York. B has a place of business in New York and often finds it necessary to transfer funds to parties, living in or around Chicago. They arrange that each shall accept the paper of the other. In this way they accomplish their purpose of putting the various payees in funds, without any transfer of coin or currency between New York and Chicago, except upon accountings made between them at stated intervals.

A form of bill of exchange is set out in Appendix B.

Sec. 4. CHECKS. "A check is a bill of exchange drawn on a bank, payable on demand."[4]

A check may be called a kind of a bill of exchange. It differs from other bills of exchange in these particulars:

(1) It is drawn on a bank or banker.
(2) It is payable on demand; bills are either payable on demand or at a fixed or determinable future time.
(3) It is drawn by one who thereby asserts that he is a depositor in the bank or with the banker and that he has funds there sufficient to cover the check.

Checks are as far as possible governed by the same rules which govern bills of exchange.

4. Uniform Negotiable Instruments Act, Secs. 185-189 (Appendix A).

(b) *Special forms of the above instruments.*

Sec. 5. CERTIFICATES OF DEPOSIT. A certificate of deposit is an instrument issued by a bank reciting a deposit of a certain sum of money, payable on demand or at a fixed time. It is negotiable, if drawn properly, being a form of promissory note.

Banks issue certificates of deposit, bearing interest, and payable either on demand or at a time fixed. They are negotiable if containing the elements of negotiable paper, for the simple reason that they are then negotiable promissory notes. Therefore we may say that a negotiable certificate of deposit is a promissory note made by a bank to the order of its depositor.

Sec. 6. BONDS. A bond is an evidence of indebtedness issued by a municipal, public or private corporation payable at a date certain and is negotiable when drawn in accordance with the rules governing commercial paper.

A bond is an instrument evidencing the indebtedness of a corporation, issued under the seal thereof, usually referring to some mortgage or trust deed given to secure the debt whereof it is the evidence. If it contains sufficient words of negotiability and is not clogged with any condition or stipulation rendering it conditional or uncertain, it is negotiable for the reason that it is then a promissory note.

Bonds are of two sorts:

(1) *Registered bonds*: or bonds which are transferable by registration of the name of the transferee

on the books of the company where the payee's name is registered. Their negotiability is said to be temporarily withdrawn.

(2) *Coupon bonds*: or bonds to which are attached interest coupons to be clipped off and presented for payment when due. These coupons are usually in form and effect promissory notes, and may circulate as such before or after due, independent of the main instrument. Coupon bonds are negotiable.

Bonds are issued in series. They are usually secured by a mortgage in the form of a trust deed, to a certain person, who represents the bond holders as trustee.

Sec. 7. BANK DRAFTS. A bank draft is a bill of exchange payable on demand, drawn by one banker or bank upon another banker or bank to the order of a person therein named. It is negotiable as usually drawn.

If one being in Chicago desires to send money to New York and for some reason does not or cannot accomplish his result by use of his personal check, he may buy a draft on a New York Bank. This is simply a bill of exchange in which drawer and drawee are banks and bankers. As usually drawn such drafts are negotiable.

(c) *Documents of title made negotiable by special statute but not subject to negotiable instruments law or law merchant.*

Sec. 8. BILLS OF LADING. A bill of lading is an instrument issued by a carrier of goods reciting receipt

of certain goods therein described and evidencing the contract between the parties as to the details of transportation. It is not negotiable unless specially made so by statute, and even then it is not governed by the peculiar rules of the law merchant but is negotiable only in a limited way.

A bill of lading is transferable to effect the transfer of the title of the goods whereof it is the symbol. By the common law, bills of lading are assignable, not negotiable. Now in many of the states statutes have been passed conferring a peculiar and limited negotiability on bills of lading when drawn in a certain way. When such is the case such instruments are not negotiable in the sense that a promise or order to pay money may be negotiable and they are not governed by the negotiable instruments law. These statutes provide that a bill of lading may be drawn to the *order of* a certain person therein named, or bearer, or they may be drawn simply to a certain person. In the first case the goods are deliverable "to A, or his order," or "to the order of A" or "to bearer;" in the second case the goods are deliverable "to A." In the first case the bill of lading is known as an "order bill," and is negotiable in this limited sense mentioned; in the second case the bill of lading is known as a "straight bill" and is not negotiable, but simply assignable. If an order bill of lading is issued by a carrier it must take notice that such bill may be negotiated and therefore must not deliver up the goods to any one unless the bill of lading is produced by such party, properly indorsed. If a straight bill of lading is issued by a carrier, it need not assume that the bill of lading has been assigned and may therefore deliver up the goods to the con-

signee named in such bill of lading without his production of the bill of lading, unless it has received notice from the assignee of such bill that such bill has been assigned to him, and such assignee may then obtain the goods upon his production of the bill of lading as evidence that he is the assignee thereof. See Volume 3 of this Series.

Sec. 9. WAREHOUSE RECEIPTS. A warehouse receipt is not negotiable by the common law. Some states have passed statutes conferring upon such instruments when drawn in a certain way the same sort of limited and peculiar negotiability possessed by a bill of lading as described in the section above.

Many of the states are adopting the uniform warehouse receipt law. Such law divides warehouse receipts into order receipts and straight receipts, just as the uniform bills of lading act divides bills of lading. What has been said of bills of lading in the above section may be applied here. Warehouse receipts are not negotiable except by the aid of such a statute and then are negotiable in the limited way mentioned. See Volume 3 of this Series.

It is better to refer to bills of lading and warehouse receipts as Negotiable Documents of Title and to bills, notes and checks as Negotiable Instruments or Negotiable Paper.

(d) *Sundry instruments assignable but not negotiable.*

Sec. 10. CERTIFICATES OF CORPORATE STOCK. A stock certificate is an instrument issued by a corporation reciting that the bearer or person named therein

is the owner of the number of shares in the corporation as therein stated. It is freely transferable but not negotiable.

One of the objects of incorporation is to secure a free transfer of shares without affecting in anyway the existing order of affairs in the corporation. This transfer is accomplished by means of the certificate of stock which is issued to every stockholder. Yet it cannot be said that a stock certificate is negotiable; it is simply assignable. It is not subject to the rules governing commercial paper. A further consideration of such instruments should be sought in the Law of Corporations. See Volume 5.

Sec. 11. MORTGAGES. A mortgage is conveyance or lien given on real or personal property as a security for a debt. It is not negotiable, but in some states statutes confer a quasi-negotiability.

Mortgages are assignable by the mortgagee, but not negotiable, being securities for debts, and not the evidences thereof. But the notes which accompany mortgages are negotiable if correctly drawn, and indorsement of such notes operates to transfer the mortgage. In some states, statutes have been passed to the effect that if a mortgage secures and refers to a negotiable promissory note, it shall also be negotiable in the sense that the defenses shall not be set up to defeat foreclosure proceedings which could not be set up in a suit on the note on account of the note's negotiable character.

(e) *The instruments within the scope of this text.*

Sec. 12. THE NEGOTIABLE INSTRUMENTS HEREIN CONSIDERED. The negotiable instruments hereinafter discussed are only those properly falling under the uniform negotiable instruments law, and not under special statutes, that is, bills, notes, and checks and special varieties thereof. These are the instruments which constitute the proper subject-matter of "The Law of Negotiable Paper."

While various statutes in different states have attempted to confer upon various instruments a negotiable or quasi-negotiable character, the discussion of them does not, after all, fall properly under a treatment of the law of commercial paper. "Commercial paper" as it is commonly understood means paper evidencing a debt ultimately reducible to money, and not calling for the delivery of other property. It treats of the law of bills, notes, and checks. We shall hereafter consider only those three forms of instruments. What is said shall refer to bonds, certificates of deposit, bank drafts or any instrument payable in money, simply for the reason that they are bills, notes or checks. The discussion will have nothing to do with and will not apply to warehouse receipts, bills of lading, or any instrument which does not contain a promise or order to pay *money*.

CHAPTER 2.

HISTORY AND ORIGIN OF NEGOTIABLE PAPER.

Sec. 13. CONTINENTAL ORIGIN AND ADOPTION IN ENGLAND. Bills of exchange originated among the Florentine and Venetian merchants. They came into use in England and with promissory notes became negotiable by the custom of merchants.

Foreign bills of exchange are thought to have been invented by the Florentine and Venetian merchants in the 12th or 13th century as a means of transmitting credit from one country to another without the need of actually transfering money. The time of their first use in England is uncertain. Bills of exchange were not at first negotiable, and did not pass from hand to hand as they now do, but became so in the 16th or in the early part of the 17th century.

Inland bills and promissory notes came into use in England about the middle of the 17th century. One of the Judges of England, Lord Holt, in the early part of the 18th century, doubted the negotiability of promissory notes, and the Statute of 3 and 4 Anne, c. 9, was passed to declare them negotiable.

Bills and notes were first negotiable by the custom of merchants and then by reason of the universality of such custom, by the common law. Many statutes have since been passed in respect to such instruments, but are in declaration of or addition

or amendment to the common law whereby they were first negotiable. Lord Holt's opinion in respect to promissory notes is believed to have been error.

In 1878 Judge M. D. Chalmers published a Digest of the English Law of Bills, Notes and Checks. His work attracted much attention and praise, and his services were procured to draft a bill which should put the law of England in the form of a Code, and in 1882 the English Bills of Exchange Act was enacted by Parliament.

Sec. 14. NEGOTIABLE PAPER IN THE UNITED STATES. By the adoption of the common law the American states adopted the law of negotiable paper. And the law has developed therein according to the needs of the commercial world.

The American commonwealths adopted the English common law. They thereby adopted the law of negotiable instruments as it was at the date which governs the adoption. Statutes have been passed from time to time which amend the common law, but this legislation up to very recently has been of a detached sort. After Judge Chalmers' Act was passed in England, the need of a similar codification was felt in this country. It was really much more needed on account of the arbitrary division of our country into various legislative jurisdictions. In 1890 the legislature of New York had authorized the appointment of commissioners to confer with commissioners from other states in respect to uniformity in legislation. Shortly afterwards commissioners were appointed by other states and the Commissioners on Uniformity of Legislation came to be

widely representative. These commissioners procured in 1895 the services of Mr. J. J. Crawford to draw up a Code; and the results of his labors were adopted in 1896 and recommended to the various states for passage. New York was the first state to act upon such recommendation but the Uniform Negotiable Instruments Law, with some minor changes in various instances is in force now in the states set out in the note below.[5] The text of the Uniform Act is given in Appendix A and should be carefully studied in connection with the Study.

5. The Negotiable Instruments Act has been adopted in the following states: Alabama, Arizona, Colorado, Connecticut, District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

PART II.

THE FORMATION OF THE CONTRACT.

CHAPTER 3.

EXPRESSION IN NEGOTIABLE FORM: (1) FORMAL REQUISITES.

Sec. 15. IN GENERAL. Certain elements are required by law to be present in any instrument, as essential to negotiability. While it cannot be said that there are any particular words, exclusively necessary to express these elements, still strict adherence to the forms of expression approved by usage is advisable, that there may be no room for doubt.

The law merchant requires that certain elements be present to render an instrument negotiable. What these essential requirements are, it is the object of the present chapter to enquire. It may aid in the comprehension of the subject, however, to set them briefly forth here at the beginning, as follows:

(1) "It must be in writing and signed by the maker or drawer;

(2) "Must contain an unconditional promise or order to pay a sum certain in money;

(3) "Must be payable on demand, or at a fixed or determinable future time.

(4) "Must be payable to order or to bearer;

(5) "Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty." [6]

In the expression of these elements, there is customarily no great variety of form. By usage certain forms have become well known, and it is highly advisable that recognized forms be used, if the intention is to create a negotiable instrument. For it is highly important that the negotiability of a document be easily determinable. Such instruments, having some of the qualities of money and being purchased in the way of trade, should have their character plainly impressed upon them; therefore the simpler the form, the better, so long as it express all the elements. As the Illinois Supreme Court has said: "By the law merchant and by the statutes of the states in aid thereof, negotiable instruments occupy a highly useful and valuable place in the commerce and business of our people. *There is no other form of contract known that in so few words may contain so many well understood and thoroughly established legal rights and liabilities.*" [6a]

Often the negotiability of instruments is prevented by the use of too many words rather than by the use of too few. It is sometimes said that a negotiable instrument must not "carry luggage;" it must not be *clogged* with burdens. We shall see therefore that it must not contain qualifications, stipulations, etc., whereby conditions or uncertainties are imported into it. Perhaps in any particular case it is desired to make conditions and qualify

6. Uniform Negotiable Instruments Act, Sec 1.
6a. Smith v. Myers, 207 Illinois Reports, 126.

the promise or order. Then, of course, it should be done; but it should likewise be understood that the instrument so made is not negotiable.

A. "It Must Be in Writing and Signed by the Maker or Drawer."

Sec. 16. WRITING AND SIGNATURE. A negotiable instrument must be written and signed.

Rights secured through oral promises may be assignable but never negotiable, no matter what words are used to express them. The term "writing" includes "print." The writing may be in lead or ink, though it is hardly necessary to say that the latter is preferable.

So it must be signed. It is a rule that no party can be liable on a negotiable instrument as maker, drawer, or acceptor unless he has signed it, by himself or his duly authorized agent. The name signed, however, may be an assumed one. Thus if a note should be signed by the namee of a partnership, containing, say fifty partners, thus "General Manufacturing Company, by John Jones," all the partners would be individually liable thereon, for they would all be named in this fictitious name; assuming, of course, that the person signing the note had real or apparent authority to bind the firm, as stated. A signature should never be typewritten or printed.

B. "Must Contain an Unconditional Promise or Order to Pay a Sum Certain in Money."

Sec. 17. UNCONDITIONAL PROMISE OR ORDER. A negotiable instrument "must contain an unconditional promise or order——."

(1) In general. Absolute promise or order is essential.

A note must contain an absolute promise, a bill or check, an absolute order, to make them negotiable. The introduction of any condition in an instrument is fatal to its negotiable character, and the performance or happening of the condition does not confer negotiability. The certainty or absoluteness of the promise or order must appear from the language of the instrument, not from external events. Any condition inserted in the instrument is fatal to its negotiable character (though it may well be the statement of a good non-negotiable contract), but we may briefly discuss the chief ones under the headings just below.

(2) Reference to the transaction or consideration. If the promise or order is made conditioned upon the performance of consideration, negotiability is destroyed; but a mere reference to the transaction which gives rise to the instrument, whether executed or executory, does not in itself condition the promise or order.

Of course as between the parties themselves, where the consideration consists in a promise to do some act or to deliver some thing and that act is not done and that thing not delivered, the party promising to pay may set up the failure of the other party to do or deliver what he promised, notwithstanding that the promise or order is absolute in its terms according to the requirements of the negotiable instruments act. But it is to be considered that if the maker or drawer or the acceptor inserts express

terms in the instrument that it is not payable except upon certain conditions, he thereby intends to notify any possible purchaser that he must take it subject to the conditions imposed and that such instrument is not meant to have a negotiable character.

One who becomes the transferee of negotiable paper knowing that there is no consideration to support the paper, or that it has failed or that the contract has been broken, is subject to these defenses. One of the main purposes, however, for putting a promise into negotiable form is to prevent those apparently indebted thereon from setting up that the contract out of which the paper arose has been broken by the payee, or that there was no contract upon which the paper was founded. A purchaser of negotiable paper is entitled to presume that which is generally the fact that a negotiable instrument has been given for "value received," either in the shape of an act now performed or a promise of a future act. That this consideration may fail or that the contract may be broken by the payee is a possibility, as the purchaser must know, yet it does not concern him whether this has occurred or is occurring so long as he has no actual knowledge that that is the case. The law protects him unless he *knows* of the defense of no consideration, failure of consideration, or breach of contract. He may say in effect: "I am buying from B a note made by A to B's order. Inasmuch as this note has been put in negotiable form the law allows me as a purchaser to presume that B gave A something for which A made his note to B. The thing given may have been a horse, or a loan of money or a promise to perform work or any other thing for which parties may bargain. B

may have given A the thing, or he may merely have given his promise thereafter to give the thing. This is no concern of mine. B may have broken his contract. The horse, or whatever it was, may have been worthless, the promise may not have been kept. This does not concern me so long as I did not know before I purchased this paper that such was the fact." Now suppose that the purchaser of this paper is informed at the time the note is purchased, and it is so stated in the note, that it *was* a horse for which the note was given. Does the fact that he has knowledge of the particular *sort* of transaction instead of a general presumption that there was a consideration, affect his rights? Obviously it makes no difference. He need no more assume that the particular contract of which he is informed has been broken any more than he need assume that the contract whose existence he is entitled to presume in the absence of such knowledge has been broken. Consequently it is well settled that the mere fact that the particular transaction out of which the instrument arose, or the consideration, is stated, does not affect the negotiability if the instrument is otherwise correctly drawn. If however, the terms of the instrument provide that its operation is to depend upon the performance of the contract as recited, this is obviously a provision made for the purpose of qualifying its character and depriving it of negotiability for it places a condition upon its operation. The promise then becomes conditional. The mere recital, then, of the consideration does not affect the negotiability of the instrument. But a provision that in any way makes the instrument subject to the performance of the consideration

destroys negotiability, and the instrument becomes the expression of a non-negotiable contract.

One should be warned however, to scrutinize with the utmost care any instrument which sets forth the transaction and be very sure that the statement no way qualifies the promise or order.

In one case[7] these facts appear:

Siegel, Cooper & Co., merchants of Chicago, contracted with one D. Dalziel, for street car advertising to be placed by him, and gave in consideration for his undertaking the following note:

"$300. CHICAGO, March 5, 1887.

On July 1, 1887, we promise to pay D. Dalziel, or order, the sum of three hundred dollars, for the privilege of one framed advertising sign, size — x— inches, one end of each of one hundred and fifty nine street cars of the North Chicago City Railway Co., for a term of three months, from May 15, 1887. SIEGEL, COOPER & Co."

On the day of the date of this instrument when Dalziel received it, he indorsed it for value to the Chicago Trust & Savings Bank.

The advertising promised by Dalziel was never done, and the instrument was refused payment for that reason. But the bank contended that this defense of failure of consideration could not be asserted against it as a purchaser in good faith and for value of a negotiable instrument, and on this theory brought suit. The defense of the makers was that the instrument was not negotiable because it showed (as they claimed) that the payment

7. Siegel v. Bank, 131 Illinois Reports, 569.

depended upon a contract to be performed, and therefore, because non-negotiable, the transferee took it subject to such defenses as might be interposed against his transferror.

The court decided that the note was negotiable and allowed the bank to recover judgment thereon; saying in part:

"If it be conceded, as it must, that a condition inserted in a promissory note, postponing the day of payment until the happening of some uncertain or contingent event, will destroy its negotiability * * * yet under the authorities, if by the instrument the maker promises to pay a sum certain at a day certain, to a certain person or his order, such instrument must be regarded as negotiable, although it also contains a recital of the consideration. * * *"

In another case,[8] a suit was brought on a promissory note in the usual form, except that it contained the words "given for a patent right." It was sold by the payee and when suit was brought by the holder, the maker set up that the note was secured through fraud by which he was sold a worthless patent right, and claimed the right to assert this defense against the purchaser of the note on the theory that this recitation made it non-negotiable, or put the purchaser on notice.

The court in deciding that the note was negotiable, said in part: "Mercantile paper by legal inference imports a consideration. But if this implication is strengthened by a statement on the face of the paper that there was a consideration, and in what the con-

8. Hereth v. Meyer, 33 Indiana Reports, 511.

sideration consisted, can it be said that this will impair or degrade the security?"

The following cases show a different result.

This instrument was given:[9]

"CHICAGO, July 12, 1877.

Mrs. Martha A. Miller:

Please pay to the Excelsior Stone Company, or order, for stone in your buildings, $600 in installments, as follows: $200 when first floor joists are in; $200 when building is ready for the roof; $200 when stoops are finished; and charge same to my account. JAMES PARROTT.

Accepted July 12, 1877.

Martha A. Miller."

This instrument is not a negotiable instrument, as payment is to be made only as work progresses and upon certain things being done. Anyone taking this instrument, though giving value, having no notice and acquiring it before maturity, would take it subject to the defenses which might have been made against the payee therein.

Another note[10] read "12 months after date, we promise to pay to ourselves or order $321.25 for value received, payable in Boston *and subject to a policy.*" The court held that this reference to a policy rendered the note non-negotiable and impressed it as a contract merely assignable and subject to defenses in the hands of the assignee.

The principle is illustrated by these cases, that a mere recital of the consideration, even though

9. Miller v. Excelsior Stone Co., 1 Illinois Appellate Reports, 273.

10. Am. Exch. Bank v. Blanchard, 7 Allen (Massachusetts), 333.

that consideration appears to be executory in nature, does not in itself destroy negotiability, but if the promise is in any way qualified by a reference to the consideration, the instrument may express a good contract and be assignable but it is not negotiable.

(3) Reference to particular fund, account, credit, etc. A promise or order to be negotiable must be on the general credit of the maker or drawer, and not of a particular fund or account. Yet a mere reference to a fund or account to indicate the source of re-imbursement or for bookkeeping purposes does not hinder negotiability.

If a promise or order is made to pay out of or by means of a certain fund, negotiability is prevented, for the reason that the fund may not be ample. That it is, in fact, ample, is immaterial; the negotiability of an instrument cannot rest upon such extrinsic circumstance. One having funds with another, or being a creditor of that other, may give an order upon such other to transfer the funds or pay the debt to a third. That could not be a negotiable bill of exchange; it would operate as an assignment (which a bill of exchange does not); but it would not be drawn on the general credit of the drawer.

It is no objection however that the fund or an account be referred to in order to indicate how the drawee shall upon payment re-imburse himself, provided that there would still be a right of recourse to him if the fund were not sufficient. The negotiable instrument law in this respect provides, that the promise or order is unconditional when there is "an

indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount." [11]

An order read as follows: [12]

"STARKEY, N. Y., Jany. 6, 1869.

To A. You will please pay to M., or order, the sum of $2,000.00, on demand, and deduct the same from my share of the profits of our partnership business in malting.

(sd) B."

on which was indorsed:

"Accepted, Feb. 6, 1869. (sd) A."

This was a direction to pay out of a particular fund and was not on B's general credit. In other words, had there been no profits, or not sufficient profits, A could not have charged the deficiency to B, for B could have replied: "I directed you to pay out of a certain fund but you saw fit to advance money to supply the deficiency of that fund. This my order did not authorize, nor your acceptance bind, you to do."

The court said in part: "The true test would seem to be whether the drawee is confined to the particular fund, or whether though a specified fund is mentioned, he would have the power to charge the bill up to the general account of the drawer, if the designated fund should turn out to be insufficient. In the final analysis of each case, it must appear that the alleged bill of exchange is drawn on the general credit of the drawer."

11. Uniform Negotiable Instruments Act, Sec. 3.

12. Adapted from Munger v. Shannon, 61 New York Reports, 251.

In the case of an assignment of a fund or debt, there is a direction to the debtor to pay it to the assignee named. In the case of a bill referring to a fund, there is a direction to the drawee to pay a certain amount, and having done so, then to reimburse himself out of the fund mentioned, or if insufficient, to charge the balance up to the general credit of the drawer.

It may be noted here that if an order is really an assignment of a fund or credit it needs no acceptance to give the assignee a right to sue the debtor upon it, as the right of assignment by the creditor is not dependent on the debtor's assent. But a drawee of a bill of exchange cannot be made liable on the instrument until he accepts it, and this even though it amounts to a breach of contract or duty as between himself and the drawer. This is illustrated in the case of a bank check. The bank is under contract with the depositor to pay his checks if his deposit is ample to cover them. Yet the payee of the check can take no action against the bank if it refuses to accept or pay the check, but is left to his rights against the drawer. If the giving of the check amounted to an assignment, the assignee could demand payment of the bank and have judgment if it refused to recognize the assignment without cause.

Sec. 18. CERTAINTY OF SUM PAYABLE. Promise or order must be "to pay a sum certain."

(1) In general. Certainty of amount payable, determinable from the language of the instrument itself, is essential to negotiability.

Certainty of sum payable must appear from the instrument to render it negotiable. Thus a note read:

"WATERBURY, CONN., Aug. 1, 1893.
One year after date I promise to pay to the order of Norman D. Grannis, thirty five hundred dollars at the Fourth National Bank. Value received, with interest at the rate of 6% per annum *and taxes.* W. C. MYERS."

The court held that though this instrument might be the expression of a valid contract between the parties, it was not a negotiable instrument for the reason that the words "and taxes" made the amount payable uncertain.[13]

(2) When sum held not uncertain.

"The sum payable is a sum certain within the meaning of this act, although it is to be paid:

1. With interest; or
2. By stated installments; or
3. By stated installments, with a provision that upon default in payment of any installment or of interest, the whole shall become due; or
4. With exchange, whether at a fixed rate or at the current rate; or
5. With costs of collection, or an attorney's fee, in case payment shall not be made at maturity.[14]

Instruments often provide for payment in fixed installments, and often also contain a provision that on the failure of the payment of any installment or of interest, then the entire sum shall become due and payable; and these are valid provisions and do not affect the negotiability of the instrument.

13. Smith v. Myers, 207 Illinois Reports, 126.
14. Negotiable Instruments Law, Sec. 2.

Instruments often contain provisions as to payment of exchange, sometimes expressing the rate, sometimes merely stating "at current rate," and this does not make the amount uncertain within the meaning of the law.

Where a provision is to pay an attorney's fee, stating or not stating the amount thereof, if payment is not made at maturity, this does not render the amount uncertain within the meaning of the law. The costs of collection and the attorney's fee never become chargeable or of any effect if the instrument is paid at maturity. It is only in case it becomes necessary after maturity to incur liability for costs or an attorney's fees, that they may be added.

If the amount of the attorney's fee is not stated, a reasonable amount is allowed by the court.

Aside from the provisions stated, any provision whatsoever that renders the sum payable uncertain in amount destroys negotiability.

Sec. 19. PAYMENT IN MONEY. Promise or order must be to pay a sum certain "in money."

The payment promised or ordered must be in *money*. Promise or order to pay in notes or other evidences of indebtedness or in securities of any sort, or in goods, or in money and goods, or in money *or* goods at the option of the maker or drawer or acceptor, prevents negotiability.

C. Must Be Payable on Demand or at a Fixed or Determinable Future Time.

Sec. 20. DEMAND PAPER. Instrument may be payable on demand.

It is a common practice to make negotiable paper payable on demand.

It is payable on demand:

"1. Where it is expressed to be payable on demand or at sight, or on presentation;

"2. In which no time for payment is expressed. Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing accepting, or indorsing it, payable on demand." [15]

Sec. 21. FIXED OR DETERMINABLE TIME. If not payable on demand, instrument must be payable at a fixed or determinable future time.

(1) In general.

An instrument must be payable either on demand or at a time certain to occur. If there is any uncertainty whatever about the arrival of the time that destroys negotiability.

(2) What constitutes determinable future time.

"An instrument is payable at a determinable future time within the meaning of this act, which is expressed to be payable:

1. At a fixed period after date or sight; or

2. On or before a fixed or determinable future time specified therein; or

15. Negotiable Instruments Law, Sec. 7.

3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable and the happening of the event does not cure the defect." [16]

In one case the plaintiff sued on an instrument to which he claimed title, as indorsee, which was to become due and payable when Henry D. Kelley became 21 years of age. The plaintiff proved that said Kelley did become 21 years of age before the suit was started. It became material in the case to establish whether this instrument was or was not a negotiable instrument. The court in deciding that it was not negotiable said, in part,—

"* * * Was the instrument in question a [negotiable] promissory note? To constitute a promissory note, the money must be certainly payable, not dependent on any contingency, either as to the event or the fund out of which payment is to be made or the parties by or to whom payment is to be made. If the terms of an instrument leave it uncertain whether the money will ever become payable, it cannot be considered as a promissory note. Thus a promise in writing to pay a sum of money when a particular person shall be married is not a promissory note, because it is not certain he will ever be married. So of a promise to pay when a particular ship shall return from sea, for it is not certain she will ever return. But if the event on which the money is to become payable must inevitably take

16. Ibid, Sec. 4.

place it is a matter of no importance how long the payment may be suspended. * * *

"The fact that the payee lived till he was 21 years of age makes no difference. It was not a promissory note when made and it could not become such by matter *ex post facto*." [17]

An instrument payable at or after one's death may be negotiable, for death is certain to occur.

D. "Must be payable to order or to bearer."

Sec. 22. NECESSITY OF WORDS OF NEGOTIABILITY. A negotiable instrument must contain words of negotiability. These stamp its character.

The intent of the parties as to the negotiability of the instrument is indicated by their use of "words of negotiability." These words must be present in every negotiable instrument. Of course they do not in themselves make an instrument negotiable, that is, are of no effect where other elements are lacking. But they, too, must be present. It contains words of negotiability when (1) it is payable to order; (2) when it is payable to bearer. In the two following sections we consider what language makes an instrument payable to order and what, payable to bearer.

Sec. 23. WHEN INSTRUMENT PAYABLE TO ORDER. "The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order."

"It may be drawn payable to the order of

1. A payee who is not maker, drawer, or drawee; or

17. Kelley v. Hemingway, 13 Illinois Reports, 604.

2. The drawer or maker; or
3. The drawee; or
4. Two or more payees, jointly; or
5. One or some of several payees; or
6. The holder of an office for the time being.

Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty." [18]

Instruments to order, customarily read "Pay to the order of John Brown" or "Pay to John Brown, or order."

It will be noticed that the person to whose order it is made may be the drawer or maker himself. In connection with this provision, one should recall the provision that "Where a note is drawn to the maker's own order it is not complete until indorsed by him."

Sec. 24. WHEN INSTRUMENT PAYABLE TO BEARER. "The instrument is payable to bearer:

1. When it is expressed to be so payable; or
2. When it is payable to a person named therein or bearer; or
3. When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or
4. When the name of the payee does not purport to be the name of any person;
5. When the only or last indorsement is an indorsement in blank." [19]

18. Uniform Negotiable Instruments Law, Sec. 8.
19. Ibid, Sec. 9.

(1) When it is expressed to be so payable.

In such a case the instrument simply reads "Pay to bearer."

(2) When it is payable to a person named therein, or bearer.

In such a case the instrument reads "pay to John Brown, or bearer." In that event it can be transferred by mere delivery without the indorsement of John Brown.

(3) When it is payable to the order of a fictitious or non-existing person and such fact was known to the person making it so payable.

If an instrument is made payable to a fictitious person, and this is known to the person making the instrument, it is considered as payable to bearer, and may be transferred without indorsement. From the fact that the payee is fictitious, the knowledge of that fact by the maker will be rebuttably presumed.

(4) When the name of the payee does not purport to be the name of any person.

Instruments payable to "cash," "bills payable," or any impersonal payee are negotiable and payable to bearer.

(5) When the only or last indorsement is an indorsement in blank.

If an instrument, whether payable to bearer or not, is indorsed in blank, or if the last indorsement

upon it is in blank, it may then pass by delivery without indorsement. That is to say it is payable to bearer. Thus suppose an instrument is payable to John Brown, or order. Its negotiation requires indorsement by John Brown. Let us say he indorses it "Pay to William Smith, (sd) John Brown." Then its further negotiation requires the indorsement of William Smith. Suppose that William Smith endorses it in blank, that is to say, by simply writing "William Smith." Its further negotiation may be accomplished by mere delivery or, if the parties choose, by indorsement.

CHAPTER 4.

EXPRESSION IN NEGOTIABLE FORM (2) NON-ESSENTAIL AND NON-VITIATING MATTER: OF FORM; [20] AND RULES OF CONSTRUCTION.

Sec. 25. AUTHORIZING SALE OF COLLATERAL SECURITIES. A provision which authorizes the sale of collateral securities in case the instrument is not paid at maturity, is valid and does not affect negotiability.

Securities may be pledged to secure a negotiable instrument and a provision in the instrument which refers to them and authorizes them to be sold does not prevent negotiability. It aids rather than clogs the instrument, and facilitates its transfer. The right to the securities goes with the negotiation.

In the same way a reference in a note to a chattel mortgage or to a real estate mortgage given to secure the debt which the note evidences, is not destructive to negotiability, but aids it rather.

Sec. 26. AUTHORIZING CONFESSION OF JUDGMENT. A provision which authorizes confession of judgment on the instrument is valid and does not affect negotiability.

Notes frequently contain a provision whereby some attorney or any attorney is authorized to con-

20. Uniform Negotiable Instruments Law, Secs. 5-6.

fess judgment on the note. Such a note is called a judgment note. Its value lies in the fact that the note may be converted into a judgment without the formalities necessary or the time required to take judgment in the ordinary case. The defendant does not have to be served or notified, and judgment can be secured the same day that suit is entered. No evidence is required save of the signature and the amount due, for the attorney whom the note names is empowered to confess judgment.

Any holder of the note may have the confession of judgment thereon. This form is not in use in many states.

Sec. 27. WAIVING BENEFIT OF EXEMPTION AND SIMILAR LAWS. A provision whereby the debtor waives the benefit of any law in his favor does not affect negotiability but whether the waiver is effective depends on the law of the state.

A waiver of laws intended for a debtor's benefit, does not have any effect upon the negotiability, but the waiver's effect depends on local law. Theoretically it would seem one ought not to be allowed to waive a law which is to protect him as a debtor, for such law is passed as much for the good of the community, as for him. Yet in most states it is held he may waive the benefit of such laws, except such as are for the benefit also of his family, and these he cannot waive.

Sec. 28. GIVING HOLDER OPTION TO REQUIRE MONEY OR SOMETHING ELSE. Giving holder option to require money or to have something else given or

done does not impair the negotiability of an instrument.

We have already seen that an instrument to be negotiable must be payable in money, and (1) that an agreement to pay money *and* do something else, and (2) an agreement to pay money *or* at the maker's or acceptor's option, do something else, are not negotiable. But if an instrument provide that the *holder* may require payment of money or that something else be done or given, in other words, requires the obligator to pay a sum certain in money if the holder so elects, and the debtor himself have no right to govern that election, the instrument is negotiable.

The following note was given:

"Boston, April 1st, 1850.

In 4 years from date for value received the R. & B. Rwy. Co. promises to pay in Boston, to A, or order, one thousand dollars with interest thereon, at the rate of 6% per annum, payable semi-annually; or upon the surrender of this note, at any time until within six months of its maturity, the maker shall issue to the holder thereof 10 shares in the capital stock in said company in exchange therefor.

(sd) R. & B. Rwy. Co.,
Per X, Pres't.
Y, Treas'r."

This note is negotiable; the promise to pay a certain sum being absolute, though the *holder* may choose to have something else done in lieu thereof.

"The instrument upon which the action was brought has all the essential qualities of a negotiable promissory note. It is for the un-conditional payment of a certain sum of money, at a specified time

to the payee's order. It is not an agreement in the alternative to pay in money or railroad stock. It was not optional *with the makers* to pay in money or stock and thus fulfil their promise in either of two specified ways; in such a case the promise would have been in the alternative."[21]

Sec. 29. SEAL. Putting a note under seal destroyed at common law its negotiable character; but by the uniform negotiable instruments act, sealing an instrument does not destroy its negotiable character.

By common law a seal destroyed negotiability. This the law has now altered. If an instrument has the other requirements essential to negotiability the seal is ineffective to change its character.

Sec. 30. OMISSION OF DATE. The omission of the date of the instrument does not impair its negotiability.

The date is a material part of the instrument but not a formal requisite. The instrument is still negotiable notwithstanding the lack of a date. In this respect the negotiable instrument law provides:

"Where an instrument expressed to be payable at a fixed period after date, is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not void the instrument in the hands of a subsequent holder in due

21. Hodges v. Shuler, 22 New York, 114.

course, but as to him the date so inserted is to be regarded as the true date."[22]

Sec. 31. ANTE-DATING AND POST-DATING. Dating instrument before or after its issue, if not for fraudulent purposes, does not invalidate it.

The negotiable instrument law provides:

"The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires title thereto as of the date of delivery." [23]

Sec. 32. TECHNICAL RULES OF CONSTRUCTION. Where an instrument is ambiguous the following rules of construction are applied.[24]

(1) Where the sum payable is expressed in words and figures, the words govern, in case of discrepancy.

(2) Interest provided for runs from the issue of the instrument in case no date is stated.

(3) Where the instrument is undated, it will be considered to be dated as of the date of its issue.

(4) Writing prevails over print where in conflict.

22. Uniform Negotiable Instruments Act, Sec. 13.
23. Ibid, Sec. 12.
24. Ibid, Sec. 17.

(5) If the instrument is so ambiguously drawn that it is doubtful whether it is a bill or note, the holder may treat it as either.

(6) Where one signs in such a manner that his intention is doubtful, he may be treated as an endorser.

(7) If two or more persons sign a note reading "I promise to pay," both are jointly and severally liable thereon.

CHAPTER 5.

EXECUTION AND DELIVERY: PARTIES BOUND.

Sec. 33. DELIVERY ESSENTIAL; WHEN PRESUMED. The instrument is ineffectual between the parties until delivery thereof, which consists of a parting with the control over it, with an intention to be bound thereon; but where an instrument complete and regular on its face, comes into the hands of a purchaser in due course, delivery will be presumed.[25]

A negotiable instrument though complete and regular in form cannot take effect until it has been unconditionally delivered with the purpose of giving effect thereto. If it has passed out of the hands of the party whose name is upon it, a delivery by him even as between the parties will be presumed until the contrary is shown. In such a case it may be shown to overcome the presumption that the instrument was not parted with for the purpose of giving it effect; or was delivered conditionally or for a special purpose only.

But if the instrument, complete and regular on its face, has come into the hands of a person who acquired it before maturity, for value, and without notice of its lack of delivery, the delivery will be conclusively presumed.

Thus, suppose that A made out a promissory note payable to B for the purpose of delivering it to B in a bargain he expected to make with B. The

25. Uniform Negotiable Instruments Act, Sec. 16.

bargain, however, failed and A was about to destroy the note when B snatched it from his hand. The defense of lack of delivery could of course be interposed as against B. B, however, sells the note to C. If the note lacks any element of negotiability, the defense could also be made against C. But if the note was in negotiable form, and C was a purchaser before its maturity, for value, and without notice, the lack of delivery could not be set up against him.

If the note had been in such form when secured by B that a forgery would have been necessary to accomplish its further transfer, as where it had been made to A's own order, but not indorsed by him, the defense could have been made even as against C.

Sec 34. EXECUTION IN BLANK. AUTHORITY TO FILL. If an instrument is issued, wanting in any material particular, any holder has a prima facie authority to fill up the blanks. But blanks must be filled up in accordance with authority. One acquiring the instrument after its completion, and as a purchaser for value without notice and before maturity, can enforce it as filled up, notwithstanding the authority was exceeded.[26]

The text is shown in the following illustration:

B has in his hands A's note payable to A's order, and by A indorsed in blank. A has given this to B for the purpose of borrowing what money he can up to $500.00. B in C's presence fills up the note for $1,000 and delivers it to C of whom he receives that amount of money and then absconds. A is not

26. Uniform Negotiable Instruments Act, Sec. 14.

liable. C is bound to know B's authority. Had B filled in the amount and thus completed the instrument without C's knowledge, A would have been bound for any amount (within reason) filled in.

35. EXECUTION BY AGENT; WHEN AGENT PERSONALLY BOUND. An agent can bind his principal only by executing in the principal's name. By signing his own name and describing himself as agent, he binds himself; except when acting in capacity of public official.

The authority, real and apparent, of an agent to bind his principal on negotiable paper is governed by the rules of the law of agency. Assuming, here, that he has such authority we may inquire into the manner in which it shall be exercised.

First, let it be noticed that even though one lets it be known he is an agent and indeed so describes himself in the instrument itself, he may still be personally bound upon the instrument; upon the broad general principle, that even though an agent have authority to pledge his principal's credit, he may if he choose, pledge his own.

The most approved manner in which an agent should sign to bind his principal on negotiable paper, is to recite in the body of the instrument the principal's name as the promisor therein, signing the principal's name, by himself as agent. The following illustrations will indicate whether the agent binds his principal or himself.

Illustration:

"I promise to pay, etc.
Wm. Smith, Agent."

or

"Wm. Smith, Executor."
or
"Wm. Smith, President."

binds Wm. Smith, personally, though he had authority to sign for the principal and intended to bind him or it.

Illustration:

"John Jones promises to pay, etc.
John Jones,
By William Smith, Agent."
or
"I promise to pay, etc.
John Jones,
By William Smith, Agent."
or
"We promise to pay, etc.
General Manufacturing Co.,
By William Smith, President."

binds the principal and *not* the agent, (assuming there was real or apparent authority.)

One should be very careful not to leave out the word "By." Otherwise he might be personally bound with the other party, even though he should add "agent."

To go into other possible varieties upon which the Courts have differed would only tend to confusion. The cautious business man will be careful to see that the name of the principal is in the body of the note and that the agent subscribes such principal's name by himself as agent.

The rule varies as to public officials. They are not personally bound in making negotiable paper in the performance of their duties and in the scope of their authority though they sign merely in this manner,—"John Jones, Commissary Agent."

CHAPTER 6.

CONSIDERATION FOR EXECUTION.[27]

Sec. 36. NECESSITY OF CONSIDERATION. Every negotiable instrument to be enforceable between the parties must be supported by a consideration. But lack of consideration cannot be availed of against a holder in due course.

As every simple contract must be supported by a consideration, it necessarily follows that negotiable instruments must as between the parties be so supported. But if the instrument is negotiated before maturity, and for value to a holder without notice of the want of consideration, the defense cannot be made against him.

Thus, A, expressing his purpose to make B a gift gives B his promissory note, for which B gives no return. This instrument cannot be enforced by B, but if B sells it to C, in due course, C can enforce it.

A pre-existing debt may constitute consideration for negotiable paper.

Sec. 37. CONSIDERATION PRESUMED. In the absence of proof to the contrary, a consideration in negotiable instruments will be presumed. No recital of consideration is necessary.

It is a peculiar characteristic of negotiable instruments that a consideration will be presumed until the contrary is shown. It is not necessary to recite

27. Uniform Negotiable Instruments Act, Secs. 24-29.

the consideration, nor to recite that there has been a consideration. The words "value received," or their equivalent are not necessary.

Sec. 38. ADEQUACY OF CONSIDERATION. Whether consideration is adequate or inadequate will not in the absence of fraud be inquired into, except in cases where the consideration was money loaned and the amount promised in return is enough greater to render the transaction usurious.

In this, as in other forms of contract, the adequacy or inadequacy of the consideration is in itself of no importance and will not be inquired into. If there is an allegation of fraud and other evidence to prove it besides the mere inadequacy, the Court may in a proper case take into account the inadequacy of the consideration.

If one loans money and gives his note in return for an amount enough larger to make the transaction usurious, in that sense the inadequacy of the consideration will be gone into. The effect of taking usury varies in the different states.

CHAPTER 7.

THE FORMATION OF THE ACCEPTOR'S CONTRACT.

Sec. 39. DEFINITION OF ACCEPTANCE. "The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money."[28]

We have heretofore noticed that the person in a bill of exchange upon whom the order is drawn is called the drawee until he accepts, whereupon he becomes the "acceptor." We shall see hereafter that in many cases there is no presentment for acceptance prior to presentment for payment. In the present chapter we are concerned only with the formation of the acceptor's contract, leaving other points in reference to acceptance to discussion elsewhere.

Acceptance consists in the expression of the drawee's assent to the order and his willingness to be bound thereupon. He then becomes the party primarily liable on the instrument, the drawer being only secondarily liable, that is to say, liable after the acceptor.

28. Uniform Negotiable Instruments Act, Sec. 132.

Sc. 40. HOW ACCEPTANCE MUST OR MAY BE MADE.[29] If the holder demand, acceptance must be on the face of the bill. Otherwise he may treat the bill as dishonored. But a bill may be accepted by a separate paper in which case it will be binding only in favor of one who received the bill for value. So an absolute promise to accept a bill thereafter to be drawn will operate as an acceptance in favor of any one who on the faith thereof received the bill for value.

An acceptance must be in writing. If the holder demand, the acceptance must be on the face of the bill, otherwise the holder can treat the bill as dishonored, that is, unaccepted. But, otherwise there may be an acceptance by way of extrinsic document, before or after the bill is drawn. An absolute promise to accept a certain described bill, or an extrinsic written acceptance of a bill already drawn is a good acceptance as to any one who on the faith thereof has received the bill for value, but not as to any one else.

Thus, C has a bill drawn by A on B. B states orally that he will pay it. B cannot be held on this oral promise. B says he will write an acceptance of it but not on the face of the bill. C may but need not receive such acceptance. If he does it is effective to bind B in favor of C or any one else who for value receives the bill on the faith of the acceptance. So also of B's promise to accept it before it is drawn.

Sec. 41. ACCEPTANCE PRESUMED FROM RETENTION. "Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such

29. Ibid, Secs. 133-135.

other period as the holder may allow, to return the bill accepted, or non-accepted to the holder, he will be deemed to have accepted the same."[30]

A case[31] stating the law in this regard and construing the above provision of the Negotiable Instruments Act, reads in part as follows:

"Upon delivery for acceptance the drawee is not bound to act at once. He has a right to a reasonable time, usually 24 hours, to ascertain the state of accounts between himself and the drawer, and until expiration of that time the holder has no right to demand an answer, nor without categorical answer, to deem the bill, either accepted or dishonored; not accepted, because of the right of drawee to consider before he binds himself; not dishonored, because both drawer and drawee have the right that their paper be not discredited during such period of investigation. After the expiration of that reasonable time the holder has a right to know whether the drawee assumes liability to him by accepting, and if not, he has a right to return of the document, so that he may protest or otherwise proceed to reserve his rights against the drawer. The consensus of authority is, however, that the duty rests on the holder to demand, either acceptance or return of the bill, and that mere inaction on the part of the drawee has no effect. After expiration of this time for investigation, the drawee may, by retention of

30. Negotiable Instruments Law, Sec. 137. Illinois has omitted this section.

31. Westberg v. Chicago Lumber & Coal Co., 117 Wisconsin Reports, 589. The Wisconsin Act adds "Mere retention of the bill is not acceptance."

the bill, accompanied by other circumstances, become bound as acceptor; not however by *mere* retention. There seem to be two phases of conduct recognized by the authorities as charging the drawee: one purely contractual, as where the retention is accompanied by such custom, promise, or notification as to warrant the holder to the knowledge of the drawee, in understanding that the retention declares acceptance; the other where the conduct of the drawee, is substantially tortious, and amounts to a conversion of the bill. This is the phase of conduct which our negotiable instruments statute * * * has undertaken to define and limit as refusal (not mere neglect) to return the bill, or destruction of it; reiterating the common law rule that mere retention of the bill is not acceptance."

This is an excellent statement of the common law rule and the reasons therefor. Some cases, however, have held that *mere* retention is sufficient to constitute acceptance.

Sec. 42. ACCEPTANCE OF INCOMPLETE BILL. Drawee's acceptance may be made while the bill is still incomplete, it being completed thereafter.[32]

Sec. 43. ACCEPTANCE AFTER NON-ACCEPTANCE OR AFTER MATURITY. A drawee may accept a bill after maturity, or after dishonor by non-acceptance or non-payment. If a bill payable after sight is dishonored and afterward accepted the holder is entitled to have the bill accepted as of the date of the first presentment.[33]

32. Uniform Negotiable Instruments Act, Sec. 138.
33. Ibid.

Sec. 44. KINDS OF ACCEPTANCE. Acceptances are either general or qualified. The holder may demand a general and refuse a qualified acceptance.[34]

(1) What constitutes general acceptance. Any acceptance which does not vary the terms of the bill is a general acceptance.

To this acceptance the holder is entitled. He may treat the bill as dishonored if such acceptance is refused. But if he choose he may take a qualified acceptance. An acceptance is still general though it name a particular place for payment, unless it expressly states that the bill is to be paid there and not elsewhere.

(2) What constitutes qualified acceptance. An acceptance is qualified which varies any term of the bill.

"An acceptance is qualified, which is:

1. Conditional, that is which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;
2. Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
3. Local, that is to say, an acceptance to pay only at a particular place;
4. Qualified as to time;
5. The acceptance of some one or more of the drawees but not of all."[35]

34. Ibid, Sec. 139.
35. Ibid, Sec. 141.

By custom an acceptance is not deemed to be qualified which recites a place of payment unless it further recites that it is payable *only* at such a place.

Sec. 45. EFFECT OF QUALIFIED ACCEPTANCE. It binds the acceptor according to the tenor thereof. it discharges the drawer and previous indorsers unless they consent thereto. They do assent thereto when after notice of such acceptance, they neglect within a reasonable time to dissent to the holder.

Sec. 46. ACCEPTANCE (CERTIFICATION) OF CHECK. Certification of check by the drawee bank is an acceptance thereof; and charges the bank according to the tenor of the check; but certification at the request of the holder discharges drawer and indorsers.

Checks are as far as possible governed by rules which govern other bills of exchange. Acceptance of a check is sometimes termed "certification." The bank thereupon becomes primarily liable to pay the check. If at the holder's request, the check is certified, that discharges previous indorsers and the drawer, because such holder might have received payment. A certification at his request amounts practically to a deposit by him. If at the drawer's or indorser's request such drawer and indorser remain secondarily liable.

CHAPTER 8.

THE FORMATION OF THE CONTRACT OF PARTIES FOR ACCOMMODATION OR FOR HONOR.

Sec. 47. ACCOMMODATION PARTY DEFINED. One who becomes a party to a negotiable instrument in order to lend his credit to another is called an accommodation maker, drawer, indorser, or acceptor as the case may be.

Just as one may become surety for another in any form of indebtedness, so one may lend his credit to another by signing a negotiable instrument. Such party is bound notwithstanding he receives no benefit from his act, and although any one who takes the instrument for value knows that he takes no benefit. Thus a party may for another's accommodation sign as maker of a note, drawer or acceptor of a bill or indorser of a bill, note, or check. In such a case there are always two parties, at least, besides the accommodating party, namely the accommodated party and the one who extends credit to him, otherwise no rights can arise. Thus I make a note to B. for B's benefit and without receiving any consideration therefor. But unless B uses the note and sells it for value to C, I could not be held, for, should B sue me upon the note, I could defend that there was no consideration, that is to say, that B neither gave me nor any one else anything in return for my promise, and this would be true even though I recited that value had been received. But if B should sell

the note to C in order to use my credit I should be liable to C and could not say that I received nothing so far as C was concerned, notwithstanding C knew that to be the fact, provided, however, it was indeed the fact that I had signed for accommodation and not otherwise.

In the same way one may become joint maker with the accommodated party upon a note, or draw or accept a bill or indorse any commercial paper in order that his name may give the paper a value which it would not otherwise have.

One who signs as an accommodation party and who has to pay the instrument by reason thereof has his right of reimbursement against the person who should have paid it.

Sec. 48. ACCEPTANCE FOR HONOR. Acceptance for honor consists in the acceptance of a protested, not overdue bill by one who is not the drawee thereof nor other party liable thereon, for the honor of some other party thereto.

Acceptance for honor consists likewise in a lending of credit. One who accepts for honor differs from one who accepts for another's accommodation in this respect. An accommodation acceptor is the drawee named in the bill. He accepts for some other person's benefit but the bill was drawn on him that he might so accept it. But an acceptor for honor is one who is no party to the bill, but becomes such by intervention, and who volunteers to assume the place of the drawee of such bill, and to do what such drawee should have done or was expected to do.

An acceptance may be for the honor of any one

on the bill, but it is presumed, if not otherwise stated, to be for the honor of the drawer.

The acceptance for honor may be for part only of the sum for which the bill is drawn. It must state that it is for honor and be signed by the acceptor for honor.

The acceptor for honor becomes liable to all parties who are subsequent to the party for whose honor the acceptance is made.

The bill so accepted must be presented to the drawee when due for payment and protested for nonpayment before the acceptor for honor can be made to pay it. This is true although there may be small hope that the drawee will pay it, as he has already refused to accept it when it was presented to him for that purpose.

The acceptor for honor will be discharged unless the bill is presented to him for payment within one day after its maturity, or if he resides in some other place unless it is put in the mails within twenty-four hours after such date of maturity.

In connection with this Section read Sections 161-170 in Appendix A.

Acceptance for honor is also called acceptance *supra protest.*

Sec. 49. PAYMENT FOR HONOR. Payment for honor consists in payment by some other party than the drawee or the acceptor for the honor of some party liable on the bill accepted or for whose account such bill was drawn.

Payment for honor is for the same purpose as acceptance for honor, and consists in the intervention of some one to take the place of the drawee or acceptor named in the bill where such bill has been

presented to the drawee or acceptor for payment, and protest for non-payment has been made. A bill might be protested for non-payment where it had been accepted or where it had not been accepted, for we shall find that it is not always necessary to present a bill for acceptance, but sometimes it is sufficient to simply present it for payment when due.

A payment for honor must be stated to be such and must be attested by a "notarial act of honor which may be appended to the protest or form part of it." This notarial act must set forth the declaration of the payer that he pays the bill for honor and for whose honor he pays it.

One who pays for honor and who properly saves his rights succeeds to the rights of the holder against the person for whose honor he pays and parties liable to the latter.

In connection with this Section read Sections 171-177 in Appendix A.

PART III.

OPERATION OF THE CONTRACT.

CHAPTER 9.

NEGOTIATION.[36]

A. In general of negotiation and indorsement.

Sec. 50. MEANING OF NEGOTIATION. By negotiation is meant the transfer of negotiable paper by the payee thereof or his transferee with the intention and effect of constituting the transferee the holder of the legal title thereof.

To negotiate commercial paper is to transfer it to another for the purpose of investing the ownership in him. generally or for some special purpose.

Sec. 51. KINDS OF NEGOTIATION. Negotiation is by delivery and by indorsement.

Some instruments, we have noticed, are negotiable by delivery. That is when they are payable to bearer. And when they are payable to bearer has also been stated. In such case they may also be indorsed, but this enlarges the liability of the transferor. But when payable to order they are transferred by indorsement, and the indorsement is

36. Uniform Negotiable Instruments Law, Secs. 30-50.

necessary to negotiation. A holder of paper which must be negotiated by indorsement does not become a holder in due course until indorsement has actually been made, no matter when he acquired the paper.

Sec. 52. HOW INDORSEMENT ACCOMPLISHED.

(1) Must be in writing. An indorsement must be in writing on the instrument itself or on a paper attached thereto.

An indorsement must be written on the instrument or on a paper attached thereto. This attached paper is called an allonge. The indorsement may be on the face or the back of the paper, though in practice it is almost without exception placed upon the back.

If a transfer is made by separate writing, it is an *assignment* for negotiable instruments may be assigned, as well as indorsed. The title, in that case, is that of an assignee, that is, it is subject to defenses.

(2) Words sufficient or necessary. The signature of the indorser is sufficient.

The *contract* of the indorser is implied from his mere signature. If the indorsement is special, as noted below, there is also the name of indorsee, and restrictive, qualified and conditional indorsements also require additional words. But indorsement may be by signature alone, and there must be such signature. But any word or mark intended as a signature is sufficient.

The contract of the indorser, though not expressed, except by his signature, is well understood in law. He contracts to pay if the party primarily

liable does not pay, provided the necessary steps are taken to charge him, as we shall see later. He also contracts that he has good title and that prior parties have competency to contract, etc. All this is contained in the mere signature on the back of the note. The indorser's contract is noted more at length, later.

The courts have differed whether "I hereby assign" written on the instrument above the signature is a good indorsement or a mere assignment.

The most usual and the correct practice is not to attempt to set out the contract in anyway, but simply use the signature.

Words of negotiability are not necessary in the indorsement. An indorsement "Pay to John Brown" istead of "pay to the order of John Brown," will not restrict further negotiation provided the instrument itself is in its body in negotiable form.

Sec. 53. ATTEMPTED PARTIAL INDORSEMENT. Indorsement must be of the entire instrument, but if any part of the sum has been paid, there may be a good indorsement of the residue.

An indorsement of part of an instrument is not good as an indorsement because if indorsements could be divided up it would subject the party liable to great inconvenience and expense.

Sec. 54. EFFECT OF INDORSEMENT TO TRANSFER INCIDENTS. An indorsement of a negotiable instrument is effective to transfer the incidental rights therein to aid or secure the enforcement of the debt.

The debt expressed in the negotiable instrument is the main thing. Provisions and securities to aid

in its enforcement and which do not destroy negotiability, pass with an indorsement of the note.

Thus one who receives a note which has been secured by collateral, is entitled to the collateral for the purposes for which it was given; and mortgages should be assigned with the debt which they secure.

So authority to confess judgment, waivers of rights, agreements to pay costs, attorney's fees, etc., all pass to the holder of the note, because they are incidental to the debt.

Sec. 55. PRESUMPTIONS AS TO INDORSEMENT.

(1) Presumption as to time. Presumed unless dated after maturity to have been before instrument was overdue.

Indorsements after maturity though good to transfer title, subject one to defenses, if any, as we shall note later; hence the importance of this presumption. Indorsements are not usually dated.

(2) Presumption as to place. Presumed unless contrary appears, to have been at place where instrument is dated.

The place of dating is important to determine what law will govern when there is a conflict.

Sec. 56. MISCELLANEOUS RULES CONCERNING INDORSEMENT.

(1) Indorsement to "Cashier."

An indorsement to the fiscal officer of a corporation or bank, so describing him, is deemed prima

facie an indorsement to the bank or corporation. And may be negotiated further either by the cashier's or the institution's indorsement. This applies to paper payable to any fiscal officer.

(2) Payee or Indorsee misdescribed or name misspelled.

If a payee or indorsee's name is misspelled or he is otherwise misdescribed he may indorse as described, adding his correct name, if he choose, or is so required.

(3) Striking out Indorsement.

Holder may strike out any indorsement not necessary to his title. This discharges the indorser whose name is so stricken and all indorsements subsequent thereto.

(4) Negotiation by prior party.

If an instrument is negotiated back to a prior party he may re-issue and further negotiate the instrument, but cannot enforce payment against any party to whom he was personally liable.

B. Kinds of Indorsement.

Sec. 57. SPECIAL INDORSEMENT. A special indorsement is one which specifies a particular indorsee.

An indorsement to a certain person naming him in the indorsement is called a special indorsement. An instrument so indorsed cannot be further

negotiated except by indorsement until it is subsequently indorsed in blank. If the special indorsee indorses in blank, the paper will then pass by delivery. (But if the instrument is payable to bearer, it may pass by delivery notwithstanding it has been specially indorsed and there is no blank indorsement.)

Sec. 58. BLANK INDORSEMENT. A blank indorsement is one which does not specify any particular indorsee.

A blank indorsement is accomplished by merely writing the name of the indorser on the back of the instrument. It may then pass by mere delivery, but the holder may convert it into a special indorsement by writing above it "Pay to John Brown."

A special indorsement and an indorsement in blank carry with them the same liability. The contract in each instance is the same. A blank indorsement is not so safe as a special indorsement, because being transferable by delivery, a thief or finder thereof could give a good title to an innocent purchaser for value before maturity.

The three following sections relate to indorsements which *modify* the indorser's contract. Either a special indorsement or one in blank may be *qualified, restrictive, or conditional.*

Sec. 59. QUALIFIED INDORSEMENT. A special or blank indorsement may be accompanied with words qualifying, that is to say, limiting the indorser's contract.

The indorser's contract has already been noted and will hereafter be particularly considered. The

indorser may, however, if the indorsee will consent, *qualify* his contract. This is usually done by adding the words "without recourse," but even in such case the indorser warrants certain things, as noted later. Either a blank or special indorsement may be so limited. The qualification has no effect on the negotiable character of the instrument and it may be further negotiated with the same freedom as though not so indorsed.

Sec. 60. RESTRICTIVE INDORSEMENT. A special or blank indorsement may be accompanied with words restricting further indorsement.

A restrictive indorsement is an indorsement made not for the purpose of transferring the title to the instrument generally, but a special purpose, that is to say, for purposes of collection, or in trust, etc. It stops further negotiation except as authorized by the terms of the indorsement or for the purpose of carrying out the restrictive indorsement.

Sec. 61. CONDITIONAL INDORSEMENT. A special or blank indorsement may be accompanied with words making its effect conditional.

One may indorse to another on some condition. The party compelled to pay the instrument may disregard the condition, whether it has been performed or not, the condition being between indorser and indorsee. But the conditional indorsee or his transferee, will hold the instrument or the proceeds thereof subject to the condition.

CHAPTER 10.

THE TITLE OF A TRANSFEREE OF NEGOTIABLE PAPER.

Sec. 62. IN GENERAL. The title of a transferee of negotiable paper involves the two-fold inquiry, (1) whether the party liable on such paper had any defense, and if so what defense, against any prior party, and (2) whether the present transferee is a holder in due course of trade.

It has heretofore been indicated that a transferee of negotiable paper may take a better title than had his transferor; that the transfer of negotiable paper by way of negotiation defeats the right of the maker of the paper to make certain defenses, but does not defeat him of the right to make others; and in the present chapter we shall inquire in detail concerning such transferee's title. We shall assume, first, that the paper in question is negotiable; second, that some prior party has a defective title, that is to say, that some defense could be made against him by the party or parties liable on such instrument; and third, that the present transferee acquired the paper by way of sufficient negotiation (indorsement or delivery) and not by way of assignment. We shall assume the defect of title in a prior party, that is to say the existence of some defense to which he would be subject, because otherwise our inquiry would lose its pertinence. If the party or parties apparently liable on an instrument have no defense to make against any prior party, the present holder

has the admittedly good and sufficient title of such prior holders, no matter whether he acquired title in due course or not. In other words, though a transferee in order to shut off certain defenses that could have been made against prior parties, must be, as we shall find, a holder in due course, that is to say, a purchaser, in good faith, for value, and before maturity, yet if there are no defenses to be made against any one, these things become unessential. Thus the holder may in such case acquire the paper after maturity, or for no value, that is to say, as a gift, but no point can be made of this *unless* there was a defense that could have been made against the transferor.

Making these assumptions let us first inquire, under what circumstances a transferee can claim to be entitled to all the peculiar advantages of a purchaser of negotiable paper, in other words, who is a holder in due course, and secondly to what defenses he is not, to what defenses he is, subject.

A. Transferee must be a holder in due course to claim full benefit of law merchant.

Sec. 63. HOLDER IN DUE COURSE, WHO IS. In order to claim the peculiar advantages of the law merchant, the holder must be a holder in due course; that is, he must have acquired (1) paper complete and regular on its face, (2) for value, (3) in good faith, and (4) before the paper was overdue.

It is essential that all of these circumstances coexist to make one a holder in due course. They are discussed in order.

Sec. 64. COMPLETE AND REGULAR INSTRUMENT. To constitute one a holder in due course the instrument must have been complete and regularly issued.

The instrument must have been complete and regular. This requirement is sometimes stated that it must have been acquired "in the regular course of business." The idea is that there must not be such incompletion or irregularity about the instrument when transferred as practically to give notice of something wrong.

Sec. 65. TRANSFEREE MUST GIVE VALUE. One is not a holder in due course unless he has given value in consideration of the transfer.

A negotiable instrument may be the subject of a gift to the transferee, but in that event the defenses, if any, that could have been made against the transferor can be made against the transferee. But if the instrument has been acquired for value, and the other elements necessary to make one a holder in due course exist, certain of such defenses cannot be made against the present holder.

A holder has given value when he has actually parted with anything of value in the eyes of the law, that is, anything which he has a legal right to retain. We cannot say that it is synonymous with "consideration" because in the law of contracts an executory promise to part with something of value as well as the actual parting with value constitute a good consideration. But one has not given value, as an indorsee of negotiable paper until he has actually given what was agreed upon. The negotiable

instruments law provides in such respect: "When the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him."

Thus, A secures from B on fraudulent representations a note expressed to be payable in the sum of $500 and interest. A indorses this note to C for $500, $250 of which C pays to A and agrees to pay the other $250 in ten days. Before he has paid this second installment, he receives notice of the fraud. If he pays the other $250 to A it will be at his peril for B may set up the defense against C, except to defeat the $250 first paid.

Value need not be adequate. One is a purchaser for value if he give anything of value agreed by him to be given, though it be a sum of money much less than the face value of the instrument, and the giving of this will perfect his title to the instrument and give him a right to recover the face value thereof.

Sec. 66. TRANSFEREE MUST TAKE IN GOOD FAITH. One is not a holder in due course unless he has received the instrument in good faith.

It is somestimes said that a transferee is not a holder in due course unless he takes "without notice," but it describes the situation better to say he must be a taker in "good faith," or not in bad faith. It is now well settled, and the Negotiable Instruments Act expressly so provides, that one receiving

commercial paper, giving value therefor, and receiving it before maturity is a holder in due course unless he have actual and not merely constructive notice of the defect of title or purchased under such circumstances that his act amounted to an exercise of bad faith. There was in some of the earlier decisions a test stated that he must not purchase under such circumstances that would put a reasonably prudent man on inquiry, but this test has been abandoned. One is not put to active diligence to discover the defect, even though the circumstances are a little suspicious provided he have no actual knowledge and buy in good faith.

If a note is sold for much less than its face value, that may be a circumstance going, with other circumstances, to show bad faith, but otherwise it is unimportant. That is, the *mere* fact that commercial paper is purchased for less than its face value, cannot deprive a holder of his rights as a holder in due course. Yet such facts as these, that the instrument was procurable at a large discount, though the maker was known to be solvent, or the paper was amply secured, or was purchased from a total stranger, might all be matters of evidence going to prove bad faith.

Sec. 67. TRANSFEREE MUST TAKE BEFORE INSTRUMENT IS OVERDUE. An overdue instrument retains its negotiability, and may still be transferred as before maturity, yet a transferee thereof will take it subject to such defenses as existed against it in the hands of his transferor. To be a holder in due course he must have acquired it before it was overdue.

While maturity does not take from an instrument its negotiable character, still one is not a holder

in due course unless he acquired it before it was overdue. That the instrument is overdue, puts him upon inquiry as to whether something is wrong that it has not been paid.

Demand paper is considered as overdue after it has remained out more than a reasonable time.

Sec. 68. TRANSFEREE OF HOLDER IN DUE COURSE. One who purchases from a holder in due course, takes the title of that holder, even though he has notice of a defense available against a holder prior to such holder in due course, and though he acquires the paper after maturity.

Where defenses that might have existed against a holder become no longer available to defeat suit on the instrument because such instrument has been transferred, the defect in title never again re-attaches though one purchases under such circumstances that had his transferor had a defective title, his also would have been defective.

Thus, A, through a fraud in the consideration, secured a negotiable promissory note from M. Before maturity A sold the note to B who paid value and who had no knowledge of the fraud, and purchased in good faith. Concede, therefore, that B acquired a good title, so that, if he had sued, the defense of the fraud could not have been made against him. B, however, indorsed to C who at the time of his purchase knew of the defense that could have been made against A. C gives no value and acquires the instrument after maturity. But this is immaterial; he acquires B's title, which was good. Had B's title been defective, C would have had to purchase for value, in good faith, and before the note was over-

due. This is reasonable. The paper in B's hands must be paid. There is no reason therefore why its further negotiation should be restricted. If M must pay it to B, he might as well pay it to any one else to whom B indorses it.

B. The defenses which cannot be made against a holder in due course, as above defined. Personal defenses.

Sec. 69. PAYMENT BEFORE MATURITY. If one pays the sum or any part thereof owing, but not due, on paper which he fails to take up or upon which he fails to see that the proper indorsement is made, and such paper is acquired by a holder in due course such defense is not good as against him.

One who purchases a negotiable instrument for value, before it is overdue, without notice that it has been paid in whole or part, may enforce it against the maker or drawer notwithstanding such payment. The defense is not good against him. It is the duty of one paying paper before due to take it up, or to see that the payment made is indorsed upon it.

Sec. 70. SET OFF. One cannot set off claims against a holder in due course which he could have asserted against his transferor.

The law customarily allows a person when sued to set off against the plaintiff counter demands which he may have, and which may go to reduce the plaintiff's judgment or defeat it. But this right cannot be availed of in an action on a note by a holder in due course.

Sec. 71. WANT OR FAILURE OF CONSIDERATION. If the consideration for which an instrument was given, fails, or if there was no consideration, the defense thereof cannot be made against a holder in due course.

The lack of consideration is a good defense between the original parties. So a total failure of consideration will go to defeat the claim and a partial failure will go to reduce it. But such defenses are cut off by a transfer to a holder in due course. The reasoning here is similar to that which applies in sections 69 and 70.

Sec. 72. FRAUD IN THE CONSIDERATION OR INDUCEMENT. The defense that the execution of an instrument was secured by a fraudulent representation of fact cannot be made against a holder in due course.

This defense is unavailing against a holder in due course. See illustration in section one. This sort of fraud does not prevent the holder from knowing that he has executed the very instrument which is sued upon, but concerns, rather, the inducement or consideration for signing that instrument. Thus one by fraudulent representations induces me to buy a worthless patent right for which I give him my note for $100. In this case the fraud goes to the consideration or inducement, and not to the nature of my act. In connection with this section, read section 81.

Sec. 73. THEFT AND WANT OF DELIVERY OF AN INSTRUMENT PAYABLE TO BEARER. If an instrument is in such form that it may pass by delivery, a

thief or one to whom no delivery was made may pass good title thereto to an innocent purchaser for value before maturity.

When an instrument is payable to bearer has heretofore been indicated. It may then pass from hand to hand without indorsement. There is no means, therefore, by which one who purchases it, may discover the fact of its non-delivery or theft, as in the case of an instrument which cannot be negotiated without indorsement. Accordingly if such an instrument is stolen the thief may give a good title to an innocent purchaser for value before maturity. So, where one is not actually a thief, yet the instrument was never meant to be delivered, the want of delivery cannot be set up against the innocent purchaser.

Sec. 74. LACK OF AUTHORITY TO COMPLETE INSTRUMENT WHERE HOLDER DOES NOT KNOW OF ITS DELIVERY IN INCOMPLETE FORM. Where a signed instrument is delivered in incomplete form with authority to fill up the blanks above the signature and the holder in due course is not aware of its incomplete character when delivered, the fact that the instrument was completed in excess of the actual authority affords no defense as against such holder.

One putting forth an instrument which he has signed with a blank therein to be thereafter filled, cannot complain against a holder in due course that the blank was filled in excess of the authority. This is most reasonable for if one entrusts another with an instrument which he has signed and in which he has left blanks, he who made abuse of authority

possible, ought to suffer rather than an innocent party who relied on an instrument apparently good. If such holder knows that the instrument was incomplete, he is, we have found, put upon notice as to the actual authority.

Sec. 75. ILLEGALITY OF CONSIDERATION EXCEPT WHERE THE LAW MAKES THE INSTRUMENT FOR SUCH ILLEGALITY ABSOLUTELY VOID. The illegality of consideration constituting a defense to the instrument as between the parties cannot be set up against a holder in due course, except in certain cases where the law declares the instrument absolutely void because of such illegality.

Some forms of illegality, as we will hereafter note, make an instrument absolutely void, no matter into whose hands it comes. But otherwise the illegality of a transaction out of which the instrument arose cannot be made a defense against a holder in due course.

If the note is usurious and the usury is not apparent on the face of the instrument, usually the defense of usury cannot be made against the holder in due course.

The effect of charging a greater rate of interest than that which is stated by law as being the highest rate which may be contracted for, differs in different jurisdictions. In some it operates, when made a defense, as a forfeiture of all interest, or some like penalty, but it renders the contract void only in a few states. The principal can usually be recovered. A purchaser of a usurious note upon which the usury appeared would take subject to such defense. If it did not appear, he usually would not be

affected by it, unless the law declared that usury makes an instrument entirely void.

Sec. 76. LACK OF AUTHORITY OF CORPORATE OFFICER. Against the innocent purchaser for value the lack of authority of the corporate officer to execute the particular instrument purporting to bind the corporation, cannot be set up, if such officer had apparent authority to bind the corporation upon negotiable paper for legitimate purposes.

If an officer of a corporation has actual power to bind the corporation upon negotiable paper, or has apparent power so to bind it, by signing, indorsing, or accepting paper in its behalf, for its legitimate corporate purposes, then an innocent purchaser for value of an instrument signed, indorsed, or accepted apparently in behalf of such corporation, has a right to assume that the particular instrument held by him expresses a real obligation of the corporation and is not subject to the defense of lack of authority. But if there was no real or apparent authority on the part of such officer to bind the corporation on negotiable paper, then an innocent purchaser for value could not hope to hold the corporation.

One Modica, as Vice-President of the American Building Loan & Investment Society, accepted a draft in the name of that corporation, drawn upon it by one Montgomery. The acceptance of the draft was evidently for the purpose of enabling Montgomery to raise funds for his own purposes, and the acceptance was clearly beyond the real authority of Modica, as Montgomery of course knew. It appeared however that Modica was the managing officer of the corporation and that similar drafts, drawn by Montgomery had been accepted and paid by

the corporation. The purchaser of this draft knew of these previous dealings and relying thereon, gave value for the draft. The court in deciding that the actual lack of authority existing in this particular instance could not be set up against the holder in due course, said:

"We are of opinion that, under the law of its creation, the American Building Loan & Investment Society had power to execute negotiable paper. The rule is well established that corporations authorized to do a particular business, unless especially denied the power, have implied authority to contract debts in the legitimate transactions of the business authorized; and the right to contract debts, it is the equally well settled American rule, carries with it the power to give negotiable notes or bills in payment or security for the debts, unless that power is expressly denied (Citing authorities.) * * *

"The power of the society to execute notes or bills for the various purposes suggested being conceded and there being no ground for questioning the authority of Modica as Vice President to sign the name of the society to such obligations, executed in the regular course of business, the case comes within the rule that, when a corporation has power "under any circumstances," as some of the cases say, and certainly when it has power under ordinary circumstances, or in the usual course of its business to execute negotiable obligations, the bona fide purchaser of a particular obligation has a right to presume that it was executed under circumstances which gave the requisite authority." [37]

37. Grommes et al. v. Sullivan, 81 Federal Reporter, 418.

Sec. 77. LACK OF AUTHORITY OF PARTNER. If a partnership is trading in character, or if not being a trading concern, it adopts the practice of issuing commercial paper, a holder in due course relying on its character or its custom, can hold the firm on paper signed in the partnership name by a partner, though he exceeded his authority.

About the same rule applies in this case, as has been applied in the case of corporations. The partnership is bound by the act of the partner in issuing negotiable paper in its name, though he exceeded his actual authority, and though the party to whom the paper was issued could not because of his knowledge of the lack of authority recover thereupon, if the instrument comes to the hands of a holder in due course; provided it is a buying and selling company, in which each partner has apparent power to bind the partnership for partnership purposes, or though not being a buying and selling partnership it has adopted a practice of issuing negotiable paper, upon which the present holder relies. The present holder in due course can assume that the paper in question was issued in the scope of the firm business.

The following partnerships have been held "non-trading:" partnerships of attorneys, physicians, farmers, hotel keepers, laundrymen, livery stable keepers, printers and publishers, miners; or any partnership whose main business is not to buy and sell.

C. The defenses which can be set up against a holder in due course, as above defined. Real Defenses.

Sec. 78. INFANCY. A minor can plead his non-age against a holder in due course.

The defense of minority is good against all the world. A minor's express contract is voidable by him. He is liable on his implied contract for necessaries, but not upon any express contract even for them, unless he chooses not to make his minority a defense. And he may set up his defense against a holder in due course.

Sec. 79. FORGERY. A title cannot be acquired against one through forgery of his name; assuming there are no peculiar circumstances estopping him to set up the forgery.

That one's name has been forged to a document gives no rights against him; assuming that there are no particular circumstances in the case which would make it inequitable for him to set up the forgery, as where he in some measure really encouraged the act, or thereafter ratified it or did not deny his signature when it was possible for him so to do. See further, the next section.

Sec. 80. MATERIAL ALTERATION. That the instrument has been materially altered is a defense that can be set up against a holder in due course; unless the alteration was made possible by the careless manner in which the instrument was drawn. But a holder of an altered instrument may recover on it according to its original tenor.

If a material alteration is made with guilty intent, it amounts to a forgery, and the same rules apply as in the section above. If not made with guilty in-

tent yet still purposely it is nevertheless an alteration and the maker cannot be made liable upon the instrument as changed.

The alteration must be material in order to give the promissor any defense. The statute declares that "Any alteration which changes: 1. The date; 2. The sum payable, either for principal, or interest; 3. The time or place of payment; 4. The number of the relations of the parties: 5. The medium or currency in which payment is to be made; or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration." [38]

If by reason of the careless drawing of the instrument the alteration was made easily possible, the party who is guilty of such negligence is estopped to set up the alteration against a holder in due course.

Suit was brought upon a promissory note purporting to be made by defendants and reading as follows: [39]

"$1300. Kewanee, Illinois, Oct. 4, 1897.

One year after date I promise to pay to the order of ourselves thirteen hundred dollars at Kewanee, Ill. Value received, with interest at the rate of seven per cent per annum.

(sd.) L. SILVERMAN,
H. CLAY MERRITT."

Indorsed on back:

"L. Silverman.
H. Clay Merritt."

Boyden & Son, paid $1300 for the note, acquired it before maturity and had no notice of any altera-

38. Uniform Negotiable Instruments Act, Sec. 125.
39. Merritt v. Boyden, 191 Illinois Reports, 136.

tion. The defense was based on two theories: (1) That the note as originally delivered contained the figures "$100" in the margin, and the words "one hundred dollars" in the body of the note, and that the figures "$100" were altered to read "$1300," and the word "one" before "hundred" was erased, and the word "thirteen" inserted in its stead; or

(2) That the word "one" was not in the body of the note, but that there was a blank space in which the word "thirteen" had been inserted.

The court in the course of its opinion said: "First, If the note was altered by (the first method) then the alteration amounted to a forgery and appellant is not liable on the note, even though appellees were bona fide purchasers thereof for value without notice or knowledge of the change. If the amount named in the note is raised by erasing what is written, such alteration is a material one, and the note is thereby vitiated so as to become void. * * * Where a note is complete at the time when it is signed by the maker, its subsequent alteration by raising the amount thereof through obliteration of the same by the use of any chemical process, or other ingenious device, without the knowledge or consent of the maker, will discharge him from liability upon the note. * * * (The court found this theory unsupported by the evidence.)

"The second theory of the defense * * * was that, when he signed and endorsed the note, there was a blank space before the word "hundred" and that this blank space was subsequently filled by inserting the word "thirteen" therein without the knowledge or consent of the appellant. * * * When the maker of the note has, by careless execu-

tion of the instrument left room for an alteration to be made by insertion without defacing the instrument or exciting the suspicion of a careful man, and the instrument by reason of the opportunity thus afforded is subsequently filled up with a larger amount than that which it bore at the time it was signed, the maker will be liable upon it as altered to any bona fide holder without notice." (This left the contention that the marginal figures had been altered to be disposed of. For even though the makers of the note were negligent as to the body of the note, the marginal figures must have been erased and changed. As to that the Court said:) "The marginal figures have been held to be not part of the instrument, but to be intended merely as a convenient index, and as an aid to remove ambiguity or doubt in the instrument itself. The alteration or erasure of the marginal figures is an immaterial alteration and will not affect the rights of the holder of the instrument."

For these reasons the Court gave a decision in favor of the holder in due course.

The present law provides that where an instrument is altered and is come into the hands of a holder in due course, though the alteration is a defense against him, he may yet recover on the instrument according to its original tenor.

Sec. 81. FRAUD GOING TO THE EXECUTION. The fraud whereby one is induced to execute, accept or indorse a negotiable instrument under the impression that he is performing some other act with an entirely different legal effect, gives rise to a defense good against everyone, unless one is because of his negligence or otherwise estopped to set it up.

If one is fraudulently prevailed upon to attach his signature to a negotiable instrument, with the understanding that he is really signing some altogether different paper, he can set up his defense against even a holder in due course provided he was not negligent. It being the duty of every one to read what he signs, a failure to read would ordinarily constitute such negligence that the party would be estopped to set up his defense against the holder in due course. But there are rare cases in which this would not be true. So if by any trick or device another paper than the one read is substituted, a defense could be made as against even a holder in due course.

The fraud here discussed differs from that discussed above in section 72 in that the fraud there goes to the consideration or inducement and not to execution. The party in the other case signs just what he intended to sign. In such case a true bona fide holder has a good title. Here he has none if there was no negligence.

Sec. 82. ILLEGALITY WHICH BY STATUTE MAKES INSTRUMENT VOID. By statute in many jurisdictions it is declared that if an instrument is founded upon certain illegal considerations, as for instance, a gambling consideration, it shall be utterly void. In such cases the instrument is of no effect even in the hands of an innocent purchaser for value.

If the statute declares the instrument void, it becomes so to all purposes and can give no rights to any one. The chief case in which an instrument is declared void as to everyone is the case of an instrument executed as a part of a gambling transaction.

CHAPTER 11.

THE CONTRACT OF THE PARTIES.[40]

Sec. 83. OF MAKER OF NOTE. The maker's contract is to pay the note, according to its tenor, to the payee, or his transferee. He cannot deny the payee's existence or his then capacity to indorse. His liability is primary.

The maker's liability is to pay the instrument according to its tenor. Of course, if he has defenses he may set them up where that is allowable according to the principles hereinbefore discussed. He engages to pay primarily. By this we mean that no one else is to be resorted to before the maker's liability will accrue.

He engages to pay the amount of the note. It is no defense that the holder did not pay the face value.

Sec. 84. OF DRAWER OF BILL. The drawer's contract is that if the bill be not accepted or paid, according to its tenor, to the payee therein, or his transferee, he, the drawer, will pay it, provided the necessary steps be taken to charge him. He cannot deny the payee's existence or his then capacity to indorse. His liability is secondary. He may by apt words negative his liability.

A bill is drawn as an order on someone else. If that other on whom it is drawn does not accept, he

40. Uniform Negotiable Instruments Law, Sec. 60-69.

may thereby incur a liability to the drawer if he thereby break his contract, but does not incur any to the payee or other holder, unless he has accepted. Where the holder is entitled to have the bill accepted before payment, in the cases hereafter stated, a refusal by the drawee to accept, gives the holder immediate right of recourse to the drawer. Because the drawer must apply to the drawee for acceptance or payment before he can resort to the drawer, his liability is said to be secondary. The liability of a drawer of a check is governed by the same considerations.

Sec. 85. OF DRAWEE OF BILL OR CHECK. A person, firm, or corporation upon whom a bill or check is drawn cannot be made liable thereupon unless there is acceptance. But to the drawer there may be a liability for failure to accept or failure to pay, if such failure amounts to a breach of contract.

One cannot be made liable by reason of the fact that a check or bill has been drawn upon him. His failure to honor such check or bill may indeed amount to a breach of a previous contract upon his part to honor it when drawn, but his liability in that event is only to the drawer and only upon the previous contract, not upon the instrument.

When a bank refuses to honor a check when there are sufficient funds to cover its amount, that constitutes a breach of the implied contract that the bank will honor checks drawn upon it when there are funds to pay it and the drawer can have damages.

Sec. 86. OF ACCEPTOR. The acceptor of a bill of exchange, contracts to pay it according to the tenor

of his acceptance. He cannot deny the existence of the drawer or payee, or the capacity of the first to draw, the second to indorse the instrument, or the genuineness of the drawer's signature. His liability is primary.

A drawee, it was stated, may accept by general or modified acceptance, if the holder consents to take a modified acceptance. Whatever the tenor of the contract is, that is the acceptor's undertaking.

He admits the drawer's existence and the capacity to draw the paper. If the paper has been indorsed by payee, he cannot question the capacity to so endorse. He may not question the signature of the drawer. It is his duty to know such signature. But signatures of indorsers he need not know and if any has been a forgery he may set that up.

His contract is complete when the acceptance is made and delivered to the holder or his agent, and innocent purchasers for value may thereafter hold such acceptor to his contract whether they became such before or after his acceptance.

Sec. 87. CONTRACT OF UNQUALIFIED INDORSER. An unqualified indorser warrants (1) the capacity of prior parties; (2) the genuineness of the instrument; (3) the genuineness of his title thereto; (4) that the instrument will not be dishonored by non-acceptance (if bill) or non-payment; and undertakes that if for any of these reasons or otherwise the instrument is unpaid at maturity he will pay the amount thereof to the holder provided proper steps are taken to charge him. His liability is secondary.

An indorser who indorses specially or in blank, but without qualification, by his indorsement war-

rants the several things above set out. If the instrument is not paid at maturity by reason of any defense that could be set up against a holder in due course, as minority, forgery, and the like, the indorser may be sued upon the warranties contained in his indorsement. So if the instrument is simply unpaid not by reason of any defenses, but merely because the party primarily liable is insolvent or will not pay, the indorser may be proceeded against by the holder.

He undertakes that he will pay the amount of the instrument to the holder. It doesn't concern him whether the present holder became such before or after maturity, or what value he gave, or that he did or did not give any value, unless these questions become material for the reason the holder has a defense to make, and desires to show that the holder was not such in due course or did not derive a title from a holder in due course.

An indorser must, unless he has a defense which he can interpose as above, pay the face value of the note. His liability, when fixed, becomes similar to that of a maker of a note and is governable by the same rules except that it is secondary and must be fixed by certain procedure hereafter discussed.

Sec. 88. CONTRACT OF ONE WHO NEGOTIATES INSTRUMENT BY MERE DELIVERY, I. e. WITHOUT INDORSEMENT. Such party warrants to his immediate transferee and him only (1) capacity of prior parties; (2) the genuineness of the instrument; (3) the genuineness of his own title; and (4) that he

knows of nothing impairing the validity of the instrument.

In all the cases in which an instrument may be construed as payable to bearer, it may be transferred by mere delivery. In such case the transferor warrants the things set forth in the text above, but only to his immediate transferee. If, however, he indorses the instrument, without adding words of qualification, he then becomes liable as set forth in the section next above.

Sec. 89. CONTRACT OF QUALIFIED INDORSER. An indorser who qualifies his indorsement warrants all the things set forth in section 88.

An indorser whose liability is qualified by the words "without recourse" nevertheless warrants to all subsequent holders, that he knows of nothing impairing its validity, the capacity of all prior parties, and the validity of his own title. But he does not warrant that the instrument will be paid where the defense is not based on any of these grounds, but simply refused because of the maker's insolvency, etc.

Thus, suppose A makes a note to B's order, which B indorses to C who in turn indorses it "without recourse" to D. A is an infant and refuses payment on that ground. D can hold C. But if A is an insolvent, C cannot be held, for he has said "without recourse."

Sec. 90. CONTRACT OF ANOMALOUS INDORSER. An anomalous indorser is liable as a general indorser unless he provides otherwise by appropriate words.

An irregular indorsement is called an "anomalous indorser." One who makes an irregular or anomalous indorsement of a negotiable instrument is deemed to have indorsed in order to assume the liability of a regular indorser. He may, however, by adding other words, vary his contract.

Sec. 91. ORDER OF LIABILITY AMONG INDORSERS. "As respects one another indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise." (Uniform Law, Sec. 68.)

Suppose that M makes a note payable to A, which is by A indorsed to B, and by B to C, and by C to D. In order to hold any one except M, D must present the note to M for payment at maturity and save his rights against the indorsers by notice. He then may sue A, or B, or C. If he sues B, B may sue A, but not C.

CHAPTER 12.

THE PROCEDURE NECESSARY TO FIX THE LIABILITY OF THE PARTIES.

Sec. 92. GENERAL STATEMENT. In order to fix the liability of parties secondarily liable on a negotiable instrument it is necessary to take certain steps provided by law for the benefit of such parties; except where owing to peculiar circumstances they are excused, and also except where they are waived.

Parties primarily liable on a negotiable instrument know that they should pay it, and pay it when due, and therefore there is no reason why any certain procedure should be taken to fasten the liability upon them. If the instrument is not paid at maturity such parties primarily liable may be immediately sued or sued any time thereafter until the statute of limitations runs, and it is simply necessary to show the maturity of the instrument and that it is unpaid. But parties secondarily liable do not know that they will ever be called upon to pay the instrument, and their liability does not accrue until the party primarily liable has made default in his engagement. Such secondary parties have, therefore, for their protection, the right to demand that all due diligence be made to charge the primary party and that upon his default, they receive immediate notice thereof. To this end custom required, and the law now provides, that where the holder of an instrument desires to charge the parties secondarily liable thereon he must go through *a certain*

procedure, otherwise such secondary parties are discharged. What steps are necessary to charge various parties will now be considered.

A. Presentment for Payment at Maturity to Parties Primarily Liable.

Sec. 93. NOT NECESSARY TO CHARGE PARTIES PRIMARILY LIABLE. Presentment of a note to the maker thereof, or of an accepted bill to the acceptor thereof at its maturity, is not necessary to fix the liability of such maker or acceptor. But if a place of payment is provided in the instrument, and the party liable thereon has funds there at maturity to pay it, but no presentment is there and then made, that will bar further interest and costs, and the right to have the instrument paid at such place.

The neglect of a holder of negotiable paper to present it for payment at its maturity to the party primarily liable thereon (maker of a note, or acceptor of a bill or check) will not operate to discharge such parties. Such a rule is highly reasonable. For instance, if one has borrowed $5,000 for one year and given his note therefor, and the holder has not on the maturity of such note presented it for payment, it would be most unconscionable to hold that the holder of the note had thereby lost his cause of action. He does not even lose his right to interest, for the burden is on the maker of such note to see that it is paid when it matures.

We must note, however, at this point, the effect of failure to present for payment to the maker or acceptor when there is *a place for payment stated.* First, note that no peculiar results follow and the rule is the same as where no place of payment is

specified *unless* the party liable was at such place, that is, has funds there, for the payment of the instrument. If he was at such place to make payment, but did not find the instrument there for delivery to him on payment, he is excused from paying interest accruing after maturity, from paying costs incidental to further presentment, and from any obligation to go to the place named to make payment. By failing to have the paper at such place of payment at its maturity the holder has forfeited the right to have it there paid. When, however, he thereafter makes actual presentment to the party liable, payment must be made, for tender must be kept good.

If an instrument is payable at a certain bank, and on the date of the maturity of the instrument the party liable thereon has funds on deposit at such bank, is the bank authorized to pay out of such funds, there being no express direction? Courts have held both ways. But the Negotiable Instruments Act settles it that a provision in an instrument that it is payable at a bank, is equivalent to an order upon the bank to pay the instrument if there are funds sufficient for that purpose.[40a]

Sec. 94. PRESENTMENT FOR PAYMENT NECESSARY TO CHARGE PARTIES SECONDARILY LIABLE. Presentment for payment at maturity to the party primarily liable, is necessary to charge parties secondarily liable; except where excused or waived.

To fix the liability of the drawer and the indorsers on a bill (which has not been previously

40a. Illinois and Nebraska have omitted this section.

dishonored by non-acceptance) it is necessary to present the bill for payment at the maturity to the drawee or acceptor. To fix the liability of the indorsers on a promissory note, it is necessary to present the note for payment at its maturity to the maker. If this step of presentment is not taken, the drawer or indorser might well enough claim that if the presentment had been made to the party primarily liable thereon, he might have paid it. That being so, the party only secondarily liable ought not to have to pay it. Accordingly he is discharged. There are certain exceptions. Presentment may be waived by the drawer or indorser, or the circumstances may excuse presentment.

Sec. 95. WHAT PRESENTMENT SUFFICIENT. In order to charge parties secondarily liable, presentment for payment must be made (1) by the holder or his agent in that behalf; (2) on the day of the maturity of the instrument; (3) at a proper hour as by the law defined; (4) at a proper place, as by the law defined; (5) to the person primarily liable, or in his absence or inaccessibility, to any person found at the place of presentment; (6) by exhibiting the paper and demanding payment thereof.

The law sets forth clearly and in detail what presentment shall be deemed sufficient and reference is made to section 70-78, Appendix A in connection herewith.

(1) Presentment by whom.

This must be the holder or his agent in that behalf. Possession of a negotiable instrument payable to bearer, or properly indorsed shows prima facie authority to receive payment. One may hold

paper merely as an agent to receive payment, as shown by the form of the indorsement, or by any other evidence.

If the holder is dead, his personal representative should make presentment.

(2) Date of presentment.

This is the date of its maturity. If it is demand paper it must be presented within a reasonable time to charge the drawer or indorsers. What time is reasonable depends on circumstances. Paper matures on the date specified for payment, without grace, for grace, which was allowed at common law, has been abolished in most states. If, however, this day is a holiday, or Saturday or Sunday, the following business day is the proper day on which to make presentment, though demand paper may be presented before 12 o'clock noon on Saturday when not a holiday.

Time is computed by excluding the day on which it begins to run and including the day of payment. A month is a calendar month.

Thus, a note payable 30 days after date, and which is dated May 30th would be due *on* the thirtieth day *after* May 30th. That is, the first of the thirty days would be May 31st. The last of such thirty days would be June 29th, and this would be the day of maturity on which presentment must be made to charge the indorsers, if any, though of course failure to then present it would not discharge the maker. A note dated January 31st, due *one month* from date would be due February 28th, or, if leap year, February 29th. A note dated

January 15th, due one month from date would be due February 15th.

(3) Hour of presentment.

This must be a reasonable hour or if payable at a bank, during banking hours, unless the party liable have no funds there during banking hours, in which case presentment before the bank is closed is sufficient. What is a reasonable hour depends on the particular customs of the community. What might be a reasonable hour in a rural district might not be such in a large city.

(4) Place of presentment.

If there is a place of presentment specified, of course that governs. If there is no place specified, then the law provides the place of presentment. We may say that the instrument must be presented (1) at the place specified, or if none, then (2) at the address given, or, if none, then (3) at usual place of business or residence, or, (4) in any other case where the party can be found, or at his last known place of residence.

(5) To whom presented.

This must be to the person himelf, or to his agent, or if he is absent or inaccessible, then to any person found at the place where presentment is made. If the person liable is dead, his personal representative must be sought out, if with reasonable diligence he can be found.

Where several parties are liable as co-makers or co-acceptors, whether presentment must be made to all, or may be made to only one, depends on their relationship to each other. If they are partners presentment may be to any one, unless a place of presentment is stated. If not partners, then presentment must be to all, unless a place of presentment is stated, or unless one or more of them is agent of the others in that regard.

(6) Instrument exhibited.

The party called upon to pay an instrument is entitled to have it exhibited. Therefore due presentment has not been made without such exhibition. It has been held however that if the instrument is lost or mislaid, presentment of a copy with a promise of reasonable indemnity, is a good presentment to charge the drawer and indorsers.

Sec. 96. WHEN PRESENTMENT FOR PAYMENT NOT REQUIRED. Presentment for payment is not required when the circumstances excuse it or it is waived. In these cases the party secondarily liable is not discharged, notwithstanding such lack of presentment.

(1) Where drawer has no right to expect or require the drawee or acceptor to pay, presentment is not required.

If one draws on another without reasonable grounds for believing that the drawee will pay, he has not right to require presentment for payment. This depends on the circumstances. Even if he has no funds with the drawee, he may reasonably expect acceptance.

(2) Where an instrument is made or accepted to accommodate an indorser, he cannot require presentment for payment.

We may thus illustrate the text: A for B's accommodation, that is, to loan B his credit, makes a note to B, which B indorses to C. B is in this case the only real debtor, and A has indorsed on the theory that B will pay when the instrument is due. B therefore has no right to complain because it was not presented to A, for payment.

(3) Presentment for payment is dispensed with, where after the exercise of reasonable diligence it cannot be made.

What constitutes reasonable diligence depends on the circumstances. Looking one up in a directory and not availing one's self of other available means of information would not be reasonable diligence. But it is impossible to lay down definite rules. One must simply do what an ordinarily prudent person would do under the circumstances where one has made no presentation. The burden of showing that he exercised reasonable diligence is on him.

(4) Presentment for payment is dispensed with where the drawee is a fictitious person.

(5) Parties entitled to presentment may waive it by word or conduct.

A waiver of presentment for payment (as well as other steps to fix liability) is often embodied in the instrument itself. If so, all parties are bound

by it including all subsequent indorsers. Sometimes a waiver is embodied in the individual indorsement. Any one could also waive right to presentment in any separate instrument or by his conduct.

B. Presentment of Bill for Acceptance.[41]

Sec. 97. PRESENTMENT FOR ACCEPTANCE NECESSARY IN CERTAIN CASES TO CHARGE DRAWER AND INDORSERS. In order to charge the drawer, presentment for acceptance to the drawee is necessary (except where excused by circumstances) in the following cases:

"First: Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

"Second: Where the bill expressly stipulates that it shall be presented for acceptance;

"Third: Where the bill is drawn elsewhere than at the residence or place of business of the drawee."

In these cases, the presentment of a bill of exchange for acceptance is necessary to charge the drawer and indorsers. In other cases presentment for payment at maturity is sufficient.

Where presentment for acceptance is not required it may nevertheless be made, for two purposes:

First: To obtain as soon as possible the liability of the drawee, as an acceptor; and, second: To give, in case of non-acceptance, a right of immediate recourse against the drawee and the indorsers.

41. Uniform Negotiable Instruments Law, Secs. 143-151.

Sec. 98. WHAT PRESENTMENT FOR ACCEPTANCE SUFFICIENT. In order to charge parties secondarily liable presentment of a bill for acceptance must be made, (1) by or on behalf of the holder; (2) within a reasonable time (or negotiated within a reasonable time) on a business day before the instrument is overdue; (3) at a reasonable hour; and (4) to the drawee, his agent in that behalf, or his personal representative.

(1) Party who must make presentment for acceptance.

This must be the holder of some one who acts in his behalf. The holder might be the original payee or a transferee of such payee.

(2) Date of presentment for acceptance.

There is no exact date on which presentment for acceptance must be made, but it must be made before the instrument is overdue on a business day. It may be presented for acceptance on any day on which an instrument may be presented for payment, as above stated. When Saturday is not a holiday it may be presented before 12 noon on such day. This day must fall within a reasonable time from the time the instrument is delivered to the payee, or within a reasonable time from the last transfer. For one who holds an instrument which requires acceptance, must present it for acceptance *or* negotiate it within a reasonable time. So it might be negotiated a number of times before it was finally presented for acceptance and if such succeeding negotiation was made within a reasonable time since

the former negotiation and the presentment for acceptance made within a reasonable time after the last negotiation and before maturity, there would be no discharge of the drawer or prior indorsers.

(3) Hour of presentment for acceptance.

A bill of exchange may be presented at any hour at which a bill might be presented for payment, as above stated.

(4) To whom presented for acceptance.

It must be presented for acceptance to the drawee personally, or to an agent who has authority to accept or reject. If several drawees, acceptance must be made to all, except where one or more are agent for the others in that behalf or are partners. If the drawee is dead presentment may be made to his personal representative; if he is a bankrupt or has made an assignment presentment may be made either to him, or his trustee or assignee.

Sec. 99. WHEN PRESENTMENT FOR ACCEPTANCE IS EXCUSED. In the cases in which ordinarily presentment for acceptance must be made, it is excused in certain cases, and in those cases the bill may be treated as dishonored for non-acceptance.

(1) "Where drawee is dead, or has absconded, or is a fictitious person, or is a person not having capacity to contract by bill.

(2) "Where after the exercise of reasonable diligence, presentment cannot be made;

(3) "Where though presentment has been irregular, presentment is refused on some other ground."

Sec. 100. RIGHTS OF HOLDER WHERE BILL NOT ACCEPTED. If a bill is presented for acceptance within the time and in the manner stated, and is not accepted, or if presentment is excused, the bill may be treated as dishonored by non-acceptance and an immediate right of recourse accrues against the drawer and indorsers.

Where the bill is dishonored by non-acceptance, an immediate right of recourse accrues against prior parties. This is true not only in cases where presentment for acceptance is required in order to fix the liability of the prior parties, but also in any case where actual presentment has been made and acceptance refused. Thus suppose that on January 2, 1910, A draws a bill on B, to order of C, due in three months. On the same day the bill is delivered to C, and he indorses to D. D on January 3rd applies to B for acceptance. B refuses to accept. D may proceed at once against A and C if he has duly notified them, and need not wait until the three months have expired.

C. Notice of Dishonor.[42]

Sec. 101. NOTICE OF DISHONOR NECESSARY TO CHARGE DRAWER AND INDORSER. Notice to the drawer of a bill or check and to the indorser of a bill, check or note, that it has been dishonored by non-payment, or non-acceptance, as the case may be, is necessary to charge such drawer and indorser; otherwise

42. Uniform Negotiable Instruments Law, Secs. 89-118.

they are discharged; except where owing to the circumstances of the particular case, notice is excused, or where it has been waived.

A party secondarily liable on negotiable paper is entitled to immediate notice that the party who should have accepted it, or paid it, has failed or refused to do so. Accordingly the law provides in detail as to the time, manner and sufficiency of the notice. And unless notice is given according to the provisions of the law, any party entitled to such notice, who did not receive it, is discharged. See sections 89 to 118 in Appendix A in connection with this text.

Sec. 102. WHAT NOTICE SUFFICIENT. In order to charge parties secondarily liable on a negotiable instrument notice of dishonor must be given to such party (1) by the holder, or any one who might be compelled to pay it to the holder, or an agent duly authorized, (2) within the times provided by the law, (3) at the place provided by law; unless owing to peculiar circumstances notice is excused, or has been waived.

To set out in the text here all the detail concerning the requirements of notice would be unnecessary duplication. See sections 91 to 104 in Appendix A.

Sec. 103. WHEN NOTICE TO DRAWER IS EXCUSED. Notice to drawer is excused when after the exercise of reasonable diligence it cannot be given to or does not reach such drawer, where drawer is fictitious or lacks capacity contract, or where drawer is the person to whom the instrument is presented for payment, or where drawer has no right to expect or

require the drawee or acceptor to honor the instrument, or where the drawer has countermanded payment.

The law does not require notice to a drawer of an instrument where it would be superfluous, or where there is no right to expect it, or where it cannot with reasonable diligence be given.

Sec. 104. WHERE NOTICE TO INDORSER EXCUSED. Notice to indorser is excused where after the exercise of reasonable diligence it cannot be given or does not reach such indorser, or where indorser at the time of the indorsement knew that the drawee was fictitious or had no capacity to contract, or where indorser is the person to whom the instrument is presented for payment, or where the instrument was made or accepted for his accommodation.

Sec. 105. WHEN NOTICE OF DISHONOR WAIVED. The party entitled to notice may waive it by waiver embodied in the instrument or in his indorsement, or by word or deed, before or after time for giving notice.

A party otherwise entitled to notice may waive it. This he may do either by his express language or by his conduct. The waiver may be embodied in the instrument itself, and in that case it binds all who indorse the instrument or it may be in the individual indorsement. Waiver may be made at any time, even after the right to have notice has gone by. Thus if an indorser promises to pay the instrument when he would be discharged by lack of notice, that operates as a waiver and he will be bound.

Where one "waives protest," he thereby also waives presentment and notice of dishonor.

D. Protest.[43]

Sec. 106. PROTEST NECESSARY TO CHARGE DRAWER AND INDORSER ON FOREIGN BILL. Where a foreign bill is dishonored by non-acceptance or non-payment it must be protested; otherwise the drawer and indorser are discharged.

Any bill which on its face appears to be a foreign bill must be protested for non-acceptance or non-payment as the case may be, else the drawer and indorsers will be discharged. Inland bills and promissory notes do not need to be protested, yet often are, to furnish evidence of due presentment and giving notice of dishonor.

A form of protest is set out in Appendix B.

Protest is made when the officer or party entitled under the law to make protest, takes the instrument to the place where it may be under the law presented for acceptance or payment and there presents the instrument, and demands payment thereon. He then sets forth in writing the details of such presentment, and the demand and the refusal, giving the time and place of presentment, the fact of presentment, and the manner thereof, the cause or reason for protesting the bill, the demand made and the answer given, if any, or the fact that the party sought could not be found. Such protest must be under the hand and seal of the notary making it, if it is made by a notary, as is usual.

Sec. 107. WHO AUTHORIZED TO MAKE PROTEST. Protest may be made by a notary public; or by any

43. Uniform Negotiable Instruments Act, Secs. 152-160.

respectable resident of the place where the bill is dishonored in the presence of two or more credible witnesses.

Protest is almost universally made by a notary public. The other provision is made in case a notary is unavailable. Such notary must make the protest in person.

Sec. 108. TIME, PLACE AND MANNER OF PROTEST. The protest must be made at the time, in the place and in the manner set forth by the law.

The details of making protest are set out fully in Appendix A, in sections 153 to 156 and are so complete as to require no comment.

Sec. 109. PROTEST DISPENSED WITH OR WAIVED. Protest is dispensed with in any case which would dispense with notice of dishonor. So it may be waived in the same way that notice of dishonor may be waived.

PART IV.

DISCHARGE OF NEGOTIABLE INSTRUMENTS.

CHAPTER 13.

MANNER AND EFFECT OF DISCHARGE.[44]

Sec. 110. MEANING OF TERM "DISCHARGE." A contract is discharged when it loses its force and effect as a legal obligation.

A discharged contract is one which for some reason is no longer in force. It has lost its former legal effect. A paper may express a promise to pay money, yet the promise may be without any life in it, and not be expressive of any legal obligation. This may be true because the promise has been performed, or for other reasons that we will note.

Sec. 111. CAUSES OF DISCHARGE OF PAPER. Discharge may be (1) by payment in due course by or for the debtor; (2) by payment of accommodation paper by accommodated party; (3) by intentional cancellation by holder; (4) by the acquisition of the paper at or after maturity by the principal debtor.

(1) By payment in due course by or for the principal debtor. Payment by the maker or acceptor

44. Uniform Negotiable Instruments Act, Secs. 119-125.

is the most usual method of discharging a note or bill. Assuming that there are no accommodation parties, but that the party primarily liable on the paper pays it when it becomes mature or after its maturity this discharges it and it thereafter becomes only so much waste paper so far as any legal obligation is concerned. One who pays such paper ought, of course, as a matter of ordinary precaution, to see that it is cancelled and given to him. And we have seen that one who pays negotiable paper must take care that he is paying it to the holder.

If a party secondarily liable upon an instrument pays it, the instrument is not discharged.

(2) By payment in case of accommodation paper by the party accommodated. The real debtor may not be the maker or acceptor. One may have become maker of a note or acceptor of a bill for the accommodation of another, that is, in order to lend him credit. Such accommodator is liable just as a surety or guarantor is liable, although the creditor may know it is not really his debt. In such a case it is the real debtor's duty to pay the debt and if the accommodating party pays it, he may sue the party whom he has accommodated. If the real debtor pays the instrument, then it is discharged.

(3) By intentional cancellation by holder. If a cancellation is by the holder with the intention of destroying the instrument, as such, it destroys it, but if the cancellation is unintentional, or under a mistake or by anyone without authority, the instrument is not destroyed.

(4) By acquisition of the instrument by the principal debtor, at or after maturity. If one makes a note and at or after its maturity buys it from the

holder that is the same thing as paying it so far as discharging the instrument is concerned.

Sec. 112. DISCHARGE OF PARTY SECONDARILY LIABLE. A party secondarily liable is discharged (1) by an act that discharges the instrument; (2) by intentional cancellation of his signature by the holder; (3) by a valid tender of payment by a prior party; (4) by release of the principal debtor without express reservation of right against party secondarily liable; (5) by extension of time of payment without reserving right against the party secondarily liable; (6) by failure of the holder to take the proper steps to hold him.

A party secondarily liable is discharged by a failure of a holder, as we have seen, to take the proper steps to fix his liability. In such a case the instrument itself is not discharged; it still continues as a bill, note or check as the case may be, and the parties primarily liable may be sued upon it.

So in other ways a party secondarily liable may be discharged though the instrument continues in force. One is a valid tender of payment by a prior party. This does not discharge the instrument. One who owes money on a note is not allowed to escape his liability if he may succeed in making a tender which is not accepted. Tender of money under a debt due must be kept good. But such tender does discharge a party secondarily liable. This debt is not really his. He is to be held only in case the party does not pay who ought to pay. Consequently his rights are strictly guarded and if a tender is made to such holder which such holder ought to have accepted, such secondary party may say that he will not be held for a failure of the party

primarily liable to pay when the holder might once have had payment of his debt.

Such tender, however, must be a valid tender. A tender in something not "legal tender," or a tender of the wrong amount or a tender before the instrument was due, would not be good tenders, and would not discharge.

If the holder releases the principal debtor this will discharge the party secondarily liable, unless at the time the release is made there is an express reservation made by the holder of his rights against the party secondarily liable.

The same may be said of a contract to extend the time of payment. A mere failure to sue, or a mere unenforceable agreement, which is too indefinite to amount to a contract or is without consideration, and which therefore could not be enforced by the debtor, would not release the party secondarily liable, if his liability had been duly fixed by the taking of the proper steps.

Sec. 113. EFFECT OF PAYMENT BY PARTY SECONDARILY LIABLE. A payment by a party secondarily liable does not discharge the instrument, but such party is put in his former position and may assert his rights against prior parties, or again negotiate the paper.

A party secondarily liable may pay the paper without discharging it, because it yet has to be paid by the party primarily liable. Thus suppose A makes a note to B, who indorses to C, who indorses to D. D being unable at maturity to secure payment by A, or any other party, C, in order to avoid suit, pays it. He now stands in the same situation as though he

had not indorsed it, and may sue the prior parties as he could have done before indorsement. Or, striking out his indorsement to D, he may negotiate it to E, and thus make himself again secondarily liable if the instrument cannot be enforced by E.

SEC. 114. MATERIAL ALTERATION AS RELEASING THOSE NOT PARTIES THERETO. If an instrument is altered in any material respect it releases all parties who did not authorize or assent thereto except that an innocent purchaser for value may enforce it as it was before the alteration.

If an instrument is materially altered, it releases those who do not authorize or assent to such alteration except as far as innocent purchasers are concerned, and these may enforce the instrument as it was in its original form. We have already noted what is a material alteration, and have considered how one by a negligent drawing of paper may estop himself to say that it is altered as against innocent parties.

SEC. 115. RENUNCIATION OF RIGHTS. A holder may expressly renounce his rights against any party either by so stating in writing or delivering up the instrument.

One may renounce rights against any party or may renounce all rights upon the instrument. If he does so, the party or the instrument, as the case may be, is discharged. The discharge must be in writing, or in case of renunciation of rights against the principal debtor, it may be by delivery up of the instrument.

APPENDIX A.

UNIFORM NEGOTIABLE INSTRUMENTS LAW.

APPENDIX A.

UNIFORM NEGOTIABLE INSTRUMENTS LAW.

(For states in which this law is substantially enacted, see page 40, *note.*)

Secs.

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TITLE I.—NEGOTIABLE INSTRUMENTS IN GENERAL.

ARTICLE I.—FORM AND INTERPRETATION.

Sec. 1. An instrument to be negotiable must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer.

2. Must contain an unconditional promise or order to pay a sum certain in money.

3. Must be payable on demand or at a fixed or determinable future time.

4. Must be payable to the order or to bearer; and,

5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

Sec. 2. The sum payable is a sum certain within the meaning of this Act, although it is to be paid:

1. With interest; or

2. By stated installments; or

3. By stated installments, with a provision that upon default in payment of any installment, or of interest the whole shall become due; or

4. With exchange, whether at a fixed rate or at the current rate; or

5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

Sec. 3. An unqualified order or promise to pay is unconditional within the meaning of this Act, though coupled with:

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or

2. A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional.

Sec. 4. An instrument is payable at a determinable future time, within the meaning of this Act, which is expressed to be payable:

1. At a fixed period after date or sight; or

2. On or before a fixed or determinable future time specified therein; or

3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

Sec. 5. An instrument which contains an order or promise to do an act in addition to the payment of money is not negotiable.

But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or

2. Authorizes a confession of judgment; or

3. Waives the benefit of any law intended for the advantage or protection of the obligator; or

4. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal.

Sec. 6. The validity and negotiable character of an instrument are not affected by the fact that:

1. It is not dated; or

2. Does not specify the value given, or that any value has been given therefor; or

3. Does not specify the place where it is drawn or the place where it is payable; or

4. Bears a seal; or

5. Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

Sec. 7. An instrument is payable on demand:

1. Where it is expressed to be payable on demand, or at sight, or on presentation; or

2. In which no time for payment is expressed.

Where an instrument is issued, accepted or indorsed when overdue, it is, as regards the person so issuing, accepting or indorsing it, payable on demand.

Sec. 8. The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

1. A payee who is not maker, drawer or drawee; or

2. The drawer or maker; or

3. The drawee; or

4. Two or more payees jointly; or

5. One or more of several payees; or

6. The holder of an office for the time being.

Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty.

Sec. 9. The instrument is payable to bearer:

1. When it is expressed to be so payable; or

2. When it is payable to a person named therein or bearer; or

3. When it is payable to the order of a fictitious or non-

existing person and such fact was known to the person making it so payable; or

4. When the name of the payee does not purport to be the name of any person; or

5. When the only or last indorsement is an indorsement in blank.

Sec. 10. The instrument need not follow the language of this Act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

Sec. 11. When the instrument or an acceptance or any indorsement thereon is dated, such date is deemed *prima facie* to be the true date of the making, drawing, acceptance or indorsement, as the case may be.

Sec. 12. The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of date of delivery.

Sec. 13. When an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course, but as to him, the date so inserted is to be regarded as the true date.

Sec. 14. Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima facie* authority to fill it up as such for any amount. In order, however, that any such instrument when completed

may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is issued or negotiated to a holder in due course it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

Sec. 15. Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

Sec. 16. Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him, is conclusively presumed. And where the instrument is no longer in the possession of party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

Sec. 17. Where the language of the instrument is ambiguous, or there are omissions therein the following rules of construction apply:

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the

words are ambiguous or uncertain, reference may be had to the figures to fix the amount.

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof.

3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued.

4. Where there is conflict between the written and printed provisions of the instrument, the written provisions prevail.

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or a note, the holder may treat it as either, at his election.

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser.

7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

Sec. 18. No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed his own name.

Sec. 19. The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

Sec. 20. Where the instrument contains, or a person adds to his signature, words indicating that he signs for or on behalf of the principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

Sec. 21. A signature by "procuration" operates as notice that the agent has but limited authority to sign, and the principal is bound in case the agent in so signing acted within the actual limits of his authority.

Sec. 22. The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

Sec. 23. Where a signature is forged or made without authority it is wholly inoperative, and no right to retain the instrument or to give a discharge therefor or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.

ARTICLE II.—CONSIDERATION.

Sec. 24. Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value.

Sec. 25. Value is any consideration sufficient to support a simple contract.

2. An antecedent or pre-existing debt constitutes value and is deemed such, whether the instrument is payable on demand or at a future time.

Sec. 26. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

Sec. 27. Whether the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

Sec. 28. Absence or failure of consideration is a matter of defense as against any person not a holder in due course,

and partial failure of consideration is a defense *pro tanto*, whether the failure is an ascertained and liquidated amount or otherwise.

Sec. 29. An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

ARTICLE III.—NEGOTIATION.

Sec. 30. An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof; if payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder, completed by delivery.

Sec. 31. The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

Sec. 32. The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

Sec. 33. An indorsement may be either in blank or special; and it may also be either restrictive or qualified, or conditional.

Sec. 34. A special indorsement specifies the person to whom or to whose order the instrument is to be payable; and the indorsement of such indorsee is necessary to the

further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

Sec. 35. The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

Sec. 36. An indorsement is restrictive which either:

1. Prohibits the further negotiation of the instrument; or

2. Constitutes the indorsee the agent of the indorser; or

3. Vests the title in the indorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

Sec. 37. A restrictive indorsement confers upon the indorsee the right:

1. To receive payment of the instrument.

2. To bring any action thereon that the indorser could bring.

3. To transfer his rights as such indorsee where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

Sec. 38. A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

Sec. 39. Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make a payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any

person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

Sec. 40. Where an instrument originally payable to or indorsed specifically to bearer is subsequently indorsed specially it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

Sec. 41. Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse unless the one indorsing has authority to indorse for the others.

Sec. 42. Where an instrument is drawn or indorsed to a person, as "Cashier" or other fiscal officer of a bank or corporation, it is deemed *prima facie* to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

Sec. 43. Where the name of the payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature.

Sec. 44. Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

Sec. 45. Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed *prima facie* to have been effected before the instrument was overdue.

Sec. 46. Except where the contrary appears, every indorsement is presumed *prima facie* to have been made at the place where the instrument is dated.

Sec. 47. An instrument negotiable in its origin continues to be negotiable until it has been respectively indorsed or discharge by payment or otherwise.

Sec. 48. The owner may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

Sec. 49. Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transferer vests in the transferee such title as the transferee had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

Sec. 50. Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this Act, reissue and further negotiate the same, but he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

ARTCLE IV.—RIGHTS OF THE HOLDER.

Sec. 51. The holder of a negotiable instrument may sue thereon in his own name and payment to him in due course discharges the instrument.

Sec. 52. A holder in due course is a holder who has taken the instrument under the following conditions:

1. That it is complete and regular upon its face.

2. That he became the holder of it before it was overdue, and without notice that it has been previously dishonored, if such was the fact.

3. That he took it in good faith and for value.

4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

Sec. 53. Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

Sec. 54. Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofor paid by him.

Sec. 55. The title of a person who negotiates an instrument is defective within the meaning of this Act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

Sec. 56. To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

Sec. 57. A holder in due course holds the instrument free from any defect of title or of prior parties, and free from defenses available to prior parties among themselves and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

Sec. 58. In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But the holder who derives his title through a holder in due course, and who is not himself a party to any fraud or duress or illegality affecting the instrument, has all the rights of such former holder in respect to all parties prior to the latter.

Sec. 59. Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any

person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

ARTICLE V.—LIABILITY OF PARTIES.

Sec. 60. The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

Sec. 61. The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse, and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.

Sec. 62. The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance and admits:

1. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

2. The existence of the payee and his then capacity to indorse.

Sec. 63. A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicated by appropriate words his intention to be bound in some other capacity.

Sec. 64. Where a person, not otherwise a party to an instrument, places thereon his signature in blank before

delivery, he is liable as indorser in accordance with the following rules:

1. If the instrument is payable to the order of a third person he is liable to the payee and to all subsequent parties.

2. If the instrument is payable to the order of the maker or drawer, or is payable to dcarer, he is liable to all parties subsequent to the maker or drawer.

3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

Sec. 65. Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

1. That the instrument is genuine and in all respects what it purports to be.

2. That he has a good title to it.

3. That all prior parties had capacity to contract.

4. That he has no knowledge of any fact which would impair the validity of the instrument, or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes.

Sec. 66. Every indorser not an accommodating party who indorses without qualification, warrants to all subsequent holders in due course:

1. The matters and things mentioned in subdivision one, two, three and four of the next preceding section; and

2. That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, every indorser engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly

taken he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

Sec. 67. Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

Sec. 68. As respects one another, indorsers are liable *prima facie* in the order in which they indorse, but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

Sec. 69. Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section sixty-five of this Act, unless he discloses the name of his principal, and the fact that he is acting only as agent.

ARTCLE VI.—PRESENTMENT FOR PAYMENT.

Sec. 70. Presentment for payment is not necessary in order to charge the person primarily liable on the instrument but if the instrument is, by its terms, payable at a special place and he is able and willing to pay it there at maturity, such ability and willingness are equivelent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

Sec. 71. Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

Sec. 72. Presentment for payment, to be sufficient, must be made:

1. By the holder, or by some person authorized to receive payment on his behalf.

2. At a reasonable hour on a business day.

3. At a proper place as herein defined.

4. To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

Sec. 73. Presentment for payment is made at the proper place:

1. Where a place of payment is specified in the instrument and it is there presented.

2. Where no place of payment is specified and the address of the person to make the payment is given in the instrument and it is there presented.

3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment.

4. In any other case, if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

Sec. 74. The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

Sec. 75. Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

Sec. 76. Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if with exercise of reasonable diligence, he can be found.

Sec. 77. Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

Sec. 78. Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

Sec. 79. Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

Sec. 80. Presentment for payment is not required to charge an indorser where the instrument was made or accepted for his accomodation and he has no reason to expect the instrument will be paid if presented.

Sec. 81. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

Sec. 82. Presentment for payment is dispensed with:

1. When after the exercise of reasonable diligence presentment as required by this Act can not be made.

2. Where the drawee is a fictitious person.

3. By waiver of presentment, express or implied.

Sec. 83. The instrument is dishonored by non-payment when:

1. It is duly presented for payment and payment is refused or can not be obtained; or

2. Presentment is excused and the instrument is overdue and unpaid.

Sec. 84. Subject to the provisions of this Act, when the instrument is dishonored by non-payment, an immediate right

of recourse to all parties secondarily liable thereon accrues to the holder.

Sec. 85. Every negotiable instrument is payable at the time fixed therein without grace. When a day of maturity falls on Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before 12:00 o'clock noon on Saturday, when that entire day is not a holiday.

Sec. 86. Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

Sec. 87. Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. (This section omitted in the Illinois law.)

Sec. 88. Payment is made in due course when it is made at or after maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

ARTICLE VII.—NOTICE OF DISHONOR.

Sec. 89. Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

Sec. 90. The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who,

upon taking it up, would have a right to reimbursement from the party to whom the notice is given.

Sec. 91. Notice of dishonor may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

Sec. 92. Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

Sec. 93. Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

Sec. 94. Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder and the principal upon the receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder.

Sec. 95. A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate unless the party to whom the notice is given is in fact misled thereby.

Sec. 96. The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.

Sec. 97. Notice of dishonor may be given either to the party himself or to his agent in that behalf.

Sec. 98. Where any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

Sec. 99. Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.

Sec. 100. Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

Sec. 101. Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of his creditors, notice may be given either to the party himself or to his trustee or assignee.

Sec. 102. Notice may be given as soon as the instrument is dishonored, and unless delay is excused as hereinafter provided, must be given within the times fixed by this Act.

Sec. 103. Where the person giving and the person to receive notice reside in same place, notice must be given within the following times:

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.

2. If given at his residence, it must be given before the usual hours of rest on the day following.

3. If sent by mail, it must be deposited in the postoffice in time to reach him in the usual course on the day following.

Sec. 104. Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

1. If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day by the next mail thereafter.

2. If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision.

Sec. 105. Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

Sec. 106. Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter box under the control of the postoffice department.

Sec. 107. Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after dishonor.

Sec. 108. Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

1. Either to the postoffice nearest to his place of residence, or to the postoffice where he is accustomed to receive his letters; or,

2. If he lives in one place and has his place of business in another, notice may be sent to either place; or,

3. If he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified in this Act, it will be sufficient though not sent in accordance with the requirements of this section.

Sec. 109. Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

Sec. 110. Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

Sec. 111. A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of a presentment and notice of dishonor.

Sec. 112. Notice of dishonor is dispensed with when after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

Sec. 113. Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate notice must be given with reasonable diligence.

Sec. 114. Notice of dishonor is not required to be given to the drawer in either of the following cases:

1. Where the drawer and drawee are the same person.

2. Where the drawee is a fictitious person or a person not having capacity to contract.

3. Where the drawer is the person to whom the instrument is presented for payment.

4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument.

5. Where the drawer has countermanded payment.

Sec. 115. Notice of dishonor is not required to be given to an indorser in either of the following cases:

1. Where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the instrument.

2. Where the indorser is the person to whom the instrument is presented for payment.

3. Where the instrument was made or accepted for his accommodation.

Sec. 116. Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted.

Sec. 117. An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission.

Sec. 118. Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be, but protest is not required except in the case of foreign bills of exchange.

ARTICLE VIII.—DISCHARGE OF NEGOTIABLE INSTRUMENTS.

Sec. 119. A negotiable instrument is discharged:

1. By payment in due course by or on behalf of the principal debtor.

2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation.

3. By the intentional cancellation thereof by the holder.

4. By any other act which will discharge a simple contract for the payment of money.

5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

Sec. 120. A person secondarily liable on the instrument is discharged:

1. By an act which discharges the instrument.

2. By the intentional cancellation of his signature by the holder.

3. By the discharge of a prior party.

4. By a valid tender of payment made by a prior party.

5. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved, or unless the principal debtor be an accommodating party.

6. By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

Sec. 121. Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

1. Where it is payable to the order of a third person and has been paid by the drawer; and,

2. Where it was made or accepted for accommodation, and has been paid by the party accommodated.

Sec. 122. The holder may expressly renounce his right against any party to the instrument before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument, discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

Sec. 123. A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

Sec. 124. Where a negotiable instrument is materially altered by the holder without the assent of all parties liable thereon, it is avoided except as against a party who has himself made, authorized or assented to the alteration and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

Sec. 125. Any alteration which changes:

1. The date.

2. The sum payable, either for principal or interest.

3. The time or place of payment.

4. The number and the relations of the parties.

5. The medium or currency in which payment is to be made.

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

TITLE II.—BILLS OF EXCHANGE.

ARTICLE I.—FORM AND INTERPRETATION.

Sec. 126. A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable further time, a sum certain in money to order or to bearer.

Sec. 127. A bill itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

Sec. 128. A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

Sec. 129. An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this State. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill the holder may treat it as an inland bill.

Sec. 130. Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument at his option, either as a bill of exchange or a promissory note.

Sec. 131. The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need; that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is the option of the holder to resort to the referee in case of need, or not, as he may see fit.

ARTICLE II.—ACCEPTANCE.

Sec. 132. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

Sec. 133. The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such request is refused may treat the bill as dishonored.

Sec. 134. Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except

in favor of a person who, on the faith thereof, receives the bill for value.

Sec. 135. An unconditional promise in writing to accept a bill before or after it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

Sec. 136. The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as the day of presentation.

Sec. 137. Where a drawee to whom a bill is delivered for acceptance destroys the same or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

Sec. 138. A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill payable accepted as of the date of the first presentment.

Sec. 139. An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

Sec. 140. An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill it to be paid there only, and not elsewhere.

Sec. 141. An acceptance is qualified which is:

1. Conditional; that is to say, which makes payment by the acceptor dependent on the fullfillment of a condition therein stated.

2. Partial; that is to say, an acceptance to pay part only of the amount for which the bill is drawn.

3. Local; that is to say, an acceptance to pay only at a particular place.

4. Qualified as to time.

5. The acceptance of some one or more of the drawees but not of all.

Sec. 142. The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto.

ARTICLE III.—PRESENTMENT FOR ACCEPTANCE.

Sec. 143. Presentment for acceptance must be made:

1. Where the bill is payable after sight, or any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or,

2. Where the bill expressly stipulates that it shall be presented for acceptance; or,

3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

Sec. 144. Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged.

Sec. 145. Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day, and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and,

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

2. Where the drawee is dead, presentment may be made to his personal representatives.

3. Where the drawee has been adjuged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

Sec. 146. A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections 72 and 85 of this Act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before 12:00 o'clock noon on that day.

Sec. 147. Where the holder of a bill drawn payable elsewhere than at the place of business or residence of the drawee has not time, with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

Sec. 148. Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance in either of the following cases:

1. Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill.

2. Where, after the exercise of reasonable diligence presentment cannot be made.

3. Where, although presentment has been irregular, acceptance has been refused on some ground.

Sec. 149. A bill is dishonored by non-acceptance:

1. When it is duly presented for acceptance and such an acceptance as is prescribed by this Act is refused or can not be obtained; or,

2. When a a presentment for acceptance is excused and the bill is not accepted.

Sec. 150. Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance, or he loses the right of recourse against the drawer and indorsers.

Sec. 151. When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holders, and no presentment for payment is necessary.

ARTICLE IV.—PROTEST.

Sec. 152. Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof, in case of dishonor, is unnecessary.

Sec. 153. The protest must be annexed to the bill or must contain a copy thereof, and must be under the hand and seal of the notary making it and must specify:

1. The time and place of presentment.

2. The fact that presentment was made and the manner thereof.

3. The cause or reason for protesting the bill.

4. The demand made and the answer given, if any, of the fact, that the drawee or acceptor could not be found.

Sec. 154. Protest may be made by:

1. A notary public; or,

2. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

Sec. 155. When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

Sec. 156. A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person, other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable; and no other presentment for payment to, or demand on, the drawee is necessary.

Sec. 157. A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

Sec. 158. When the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

Sec. 159. Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When

the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

Sec. 160. Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

ARTICLE V.—ACCEPTANCE FOR HONOR.

Sec. 161. Where a bill of exchange has been protested for dishonor by non-acceptance, or protested for better security and is not overdue, any person not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn, and where there has been an acceptance for honor for one party there may be a further acceptance by a different person for the honor of another party.

Sec. 162. An acceptance for honor *supra* protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

Sec. 163. Where an acceptance for honor does not expressly state for whose honor it was made, it is deemed to be an acceptance for the honor of the drawer.

Sec. 164. The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

Sec. 165. The acceptor for honor by such acceptance engages that he will, on due presentment, pay the bill according to the terms of his acceptance: *Provided*, it shall not have been paid by the drawee: *And provided, also*, that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given to him.

Sec. 166. When a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

Sec. 167. Where a dishonored bill has been accepted for honor *supra* protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

Sec. 168. Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity.

2. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 104.

Sec. 169. The provisions of section 81 apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

Sec. 170. When the bill is dishonored by the acceptor for honor, it must be protested for non-payment by him.

ARTICLE VI.—PAYMENT FOR HONOR.

Sec. 171. Where a bill has been accepted for non-payment, any person may intervene and pay it *supra* protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

Sec. 172. The payment for honor *supra* protest in order to operate as such, and not as a mere voluntary payment, must be attested by a notarial act of honor, which may be appended to the protest or form an extension to it.

Sec. 173. The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

Sec. 174. Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given preference.

Sec. 175. Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid, are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

Sec. 176. Where the holder of a bill refuses to receive payment *supra* protest, he loses his right of recourse against any party who would have been discharged by such payment.

Sec. 177. The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

ARTICLE VII.—BILLS IN A SET.

Sec. 178. Where a bill is drawn in a set, each part of the set being numbered and containing a reference to other parts the whole of the parts constitute one bill.

Sec. 179. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

Sec. 180. Where the holder of a set indorses two or more parts to different persons he is liable on every such part and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

Sec. 181. The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

Sec. 182. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is out standing in the hands of a holder in due course, he is liable to the holder thereon.

Sec. 183. Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

TITLE III.—PROMISSORY NOTES AND CHECKS.

ARTICLE I.

Sec. 184. A negotiable promissory note within the meaning of this Act is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

Sec. 185. A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this Act are applicable to a bill of exchange payable on demand apply to a check.

Sec. 186. A check must be presented for payment within a reasonable time after its issue, and notice of dishonor given

to the drawer as provided for in the case of bills of exchange, or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

Sec. 187. Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

Sec. 188. Where the holder of a check procures it to be accepted or certified, the drawer and all indorsers are discharged from liability thereon.

Sec. 189. A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

TITLE IV.—GENERAL PROVISIONS.

ARTICLE I.

Sec. 190. This Act shall be known as the Negotiable Instrument Law.

Sec. 191. In this Act, unless the context otherwise requires:

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes print, and "writing" includes print.

Sec. 192. The person "primarily" liable on an instrument is the person who, by the terms of the instrument, is absolutely required to pay the same. All other parties are "secondarily" liable.

Sec. 193. In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

Sec. 194. Where the day, or the last day, for doing an act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

Sec. 195. The provisions of this Act do not apply to negotiable instruments made and delivered prior to the passage hereof.

Sec. 196. In any case not provided for in this act the rules of the law merchant shall govern.

APPENDIX B.

FORMS.

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FORMS.

1. Promissory Note.

$100.00 Chicago, Ill., July 1st, 1911.

August first, 1911, after date, for value received, I promise to pay to the order of William Smith, the sum of One Hundred (100) Dollars, at 1011 Blank Street, Chicago, Illinois, with interest at 6% per cent. per annum.

(sd.) WALTER W. JOHNSON.

2. Judgment Note.

Add to the above note above the place for the signature the following:

And to secure the payment of said amount I hereby authorize, irrevocably, any attorney of any Court of Record to appear for me in such Court, in term time or vacation, at any time hereafter, and confess a judgment, without process, in favor of the holder of this Note, for such amount as may appear to be unpaid thereon, together with costs and ten dollars attorney's fees, and to waive and release all errors which may intervene in any such proceedings, and consent to immediate execution upon such judgment, hereby ratifying and confirming all that my said attorney may do by virtue hereof.

(*Note*: It is better to purchase forms of judgment notes from local stationers, as such forms embody peculiar provisions applicable to the condition of the law in the state involved. The above is a form used in Illinois. Judgment notes however, are not widely used. They are used in Illinois, Ohio, Pennsylvania, New Mexico and Wisconsin.)

3. Bill of Exchange.

Cincinnati, Ohio, June 1, 1911.

One month after date, pay to the order of William H. White, One Hundred Dollars. Value received, and charge to the account of

(sd) WALTER W. JOHNSON.

To Oliver Smith,
Chicago, Illinois.

An acceptance of the above bill would read as follows: "Accepted, Chicago, June 3rd, 1911," and would be written across the face of the bill. Oliver Smith might also in such acceptance name the place of payment above his signature, thus, "Payable at 16th National Bank, Chicago." This qualification is permitted; but if he should say "Payable at 16th National Bank and not elsewhere," that would be a qualified acceptance and constitute dishonor, unless the holder assented.

4. Checks.

No. 1490. Chicago, July 1st, 1911.

THE BLANK TRUST AND SAVINGS BANK.

Pay to the order of——————John Smith——————$1000
One Thousand ———————————————— Dollars.

(sd) WM. JONES.

5. Certificate of Deposit.

No. 1008. Chicago, July 1, 1911.

James A. Jones has deposited in the 16th National Bank of Chicago, Illinois, Five Hundred Dollars, payable to the order of himself upon the return of this Certificate properly endorsed. Interest 3 per cent. per annum.

Not subject to check.

WILLIAM RANDOLPH,
Cashier.

6. Forms of Indorsement.

(1) Blank indorsement.

WILLIAM JONES.

(2) Special indorsement.

Pay to the order of John Smith.
WILLIAM JONES.

or, Pay to John Smith.
WILLIAM JONES.

(3) Qualified indorsement.

without recourse,
WILLIAM JONES.

(4) Restrictive indorsement.

Pay to John Smith, for collection.
WILLIAM JONES.

7. Notice of Dishonor of Note Where Note Not Protested.

July 1, 1911.

You are hereby notified that a promissory note made by John Smith, dated June 1, 1911, payable one month after date to the order of William H. White, and indorsed by said William H. White, was this day presented by the undersigned for payment which was refused and the undersigned as holder looks to you as indorser for payment, damages, interest and costs.

(sd) JOSEPH BLACK,
1820 Blank Street,
Chicago, Illinois.

To William H. White,
190 Blank Street,
Chicago, Illinois.

8. Certificate of Protest.

(Here attach original instrument or copy thereof.)

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

Be it Known, That on this first day of July in the year of our Lord One Thousand Nine Hundred and Eleven, I, Henry N. Green, a Notary Public, duly commissioned and sworn, and residing in the City of Chicago in said County and State, at the request of Henry W. Jones, the holder of the above bill of exchange, went with the original bill of exchange which is above attached, to the Office of The First National Bank, where such bill is payable, during the usual business hours and demanded payment thereon, which was refused for the following assigned reason—not sufficient funds and no instructions to pay.

Whereupon I, the said Notary, at the request aforesaid, did *PROTEST*, and, by these Presents, do *Solemnly Protest*, as well against the drawer of said bill and the indorsers thereof, as all others whom it may or doth concern, for exchange, re-exchange and all costs, charges, damages and interest already incurred by reason of the non-payment of the said bill of exchange.

And I, the said Notary, do hereby certify, that, on the same day and year above written, due notice of the foregoing Protest was put in the Post-Office at Chicago, Illinois, as follows:

Notice for Walter W. Johnson, 12 Blank Street, Cincinnati, Ohio. Notice for William H. White, Blankville, Illinois.

Each of the above-named places being the reputed place of residence of the person to whom this notice was directed.

In testimony whereof, I have hereunto set my hand and affixed my Official Seal, the day and year first above written.

_____

Notary Public.

Fees—Noting for Protest,....25 cents; Protest,....75 cents; Noting Protest,....25 cents; Notices,....50.
Certificate and Seal,....25 cents; Postage,.... 4 cents; Vol. 1; page 272; $2.04.

(Note: If the protest is for non-acceptance this same form may be used by writing in "non-acceptance" for "non-payment.")

9. Notice of Protest of Note.

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

July 1st, 1911.

A promissory note for $100.00 payable to the order of William Jones, dated July 1st, 1910, payable July 1st, 1911, signed by John Smith, indorsed by William Jones, being this day due and unpaid, and by me *PROTESTED* for non-payment, I hereby notify you that the payment thereof has been duly demanded, and that the holder looks to you for payment, damages, interest and costs.

Done at the request of Henry W. Jones, 1711 Blank Street, Chicago, Illinois.

HENRY N. GREEN,
Notary Public.

To William Jones,
1512 Blank Street,
Chicago, Illinois.

(*Note*: It is not necessary, but usual, to protest a note or inland bill, but a foreign bill must be protested.)

10. Notice of Protest of Bill.

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

Chicago, July 1, 1911.

Take notice that a bill of exchange for $100.00, dated June 1, 1911, drawn by Walter W. Johnson, 12 Blank Street,

Cincinnati, Ohio, in favor of William H. White, on Oliver Smith, Chicago, Illinois, indorsed by said William H. White, accepted by said Oliver Smith, payable at 16th National Bank, Chicago, was this day presented for payment, which was refused, and therefore was this day protested by the undersigned notary public for non-payment.

The holder therefore looks to you for payment thereof together with interest, costs, damages, etc., you being the drawer thereof.

HENRY N. GREEN,
Notary Public.

To Walter W. Johnson,
12 Blank Street,
Cincinnati, Ohio.

APPENDIX C.

TABLE OF INTEREST LAWS.

APPENDIX C.

Table Showing What Interest May Be Charged in the Different States and the Effect of Charging Usury.

State	Interest Chargeable By Contract	Penalty for Usury
Alabama	8%	Forfeiture of all Interest.
Alaska	10%	
Arizona	No limit	None.
Arkansas	10%	Forfeiture of debt.
California	No limit	None.
Colorado	No limit	None.
Connecticut	15%	Forfeiture of debt and interest.
Delaware	6%	Forfeiture of debt and interest.
District of Columbia	10%	Forfeiture of all interest.
Florida	10%	Forfeiture of all interest.
Georgia	8%	Forfeiture of excess interest.
Idaho	12%	Forfeiture of interest and 10% annually of principal.
Illinois	7%	Forfeiture of all interest.
Indiana	8%	Forfeiture of all interest over 6%.
Iowa	8%	Forfeiture of all interest, 8% of principal and costs of suit.
Kansas	10%	Forfeiture of double the usury.
Kentucky	8%	Forfeiture of excess interest.

State	Interest Chargeable By Contract	Penalty for Usury
Louisiana	8%	Forfeiture of all interest.
Maine	No limit	None except for loans less than $200 secured by chattel mortgage.
Maryland	6%	Forfeiture of all interest.
Massachusetts	No limit	On less than $1,000 only 18% recoverable.
Michigan	7%	Forfeiture of all interest.
Minnesota	10%	Forfeiture of debt and interest.
Mississippi	10%	Forfeiture of all interest.
Missouri	8%	Forfeiture of excess interest.
Montana	No limit	None.
Nebraska	10%	Forfeiture of all interest.
Nevada	No limit	None.
New Hampshire	6%	Forfeiture 3 times excess interest.
New Jersey	6%	Forfeiture of all interest.
New Mexico	12%	Forfeiture double the usury.
New York	6%	Forfeiture of debt and interest.
North Carolina	6%	Forfeiture of all interest.
North Dakota	12%	Forfeiture of all interest.
Ohio	8%	Forfeiture of excess over 6%.

State	Interest Chargeable By Contract	Penalty of Usury
Oklahoma	10%	Forfeiture of all interest.
Oregon	10%	Forfeiture of debt and interest.
Pennsylvania	6%	Forfeiture of excess interest.
Rhode Island	No limit	None.
South Carolina	8%	Forfeiture of all interest.
South Dakota	12%	Forfeiture of all interest.
Tennessee	6%	Forfeiture of excess interest.
Texas	10%	Forfeiture of all interest.
Utah	12%	Forfeiture of debt and interest.
Vermont	6%	Forfeiture of excess interest.
Virginia	6%	Forfeiture of all interest.
Washington	12%	Forfeiture of all interest.
West Virginia	6%	Forfeiture of excess interest.
Wisconsin	10%	Forfeiture of all interest.
Wyoming	12%	Forfeiture of all interest.

APPENDIX D.

QUESTIONS AND PROBLEMS.

APPENDIX D.

QUESTIONS AND PROBLEMS.

CHAPTER ONE.

1. State three ways in which a negotiable instrument differs from an instrument not negotiable. How does "assignment" differ from "negotiation"?

2. Define a negotiable promissory note. Who are the parties thereto?

3. Define a bill of exchange. What two sorts are there? Define them. Name the parties to a bill of exchange.

4. Define a check. In what respect does it differ from a bill of exchange?

5. Is a certificate of deposit negotiable? Why?

6. When are bonds negotiable?

7. What is a "straight" bill of lading? an "order" bill? Is a warehouse receipt negotiable?

8. Is a mortgage negotiable? Is a certificate of ownership of corporate stock negotiable?

9. What are the instruments properly falling within the negotiable instruments law?

CHAPTER TWO.

10. What was the origin of negotiable paper?

11. What was the first kind of negotiable instrument?

12. State the history in brief of the Uniform Negotiable Instruments Law?

CHAPTER THREE.

13. What are the essential elements of a negotiable instrument?

14. May a note which is signed by the maker's initial be negotiable?

15. Can one whose name, assumed or real, is not by one's self or one's agent signed to a note, be liable thereon?

16. The following note was given:

"New York, Jan. 5, 1906.

"Six months after date I promise to pay to the order of C. D. $3166. Subject to terms of contract between maker and payee of October 25, 1905. (Signed) A. B."

E. F. purchased his note for value before maturity and in good faith. When he presented it at maturity to A. B. for payment, payment was refused on account of the fact that the contract referred to had not been performed. E. F. sues A. B. A. B. sets up his defense. Can he avail of it against E. F.? Why? (Klots Co. v. M'n'f'rs Co., 179 Fed. 813.)

17. A wrote an order upon B to pay C or order $200 "out of money due me for labor." Is this a bill of exchange or an assignment? Why? Why is there any importance in the distinction? (Stebbins v. Union Pacific R. Co., 2 Wyo. 71.)

18. A made a note to the order of B which was secured by a mortgage from A to B, and one of whose provisions was that A should pay taxes, special assessments, etc., upon the mortgaged property and various other conditions and stipulations. B sold the note and assigned the mortgage to C. Is this note rendered non-negotiable by the fact that it states upon its face that it is secured by a mortgage between the parties? (Zollman v. Bank, 238 Ill. 290.)

19. Is a note which falls due in installments negotiable if otherwise correctly drawn? If it is to bear "current rate of exchange"? Suppose it provides for payment of a certain sum "with an attorney's fee and costs of collection if not paid at maturity"?

20. What is demand paper?

21. If a note is payable a certain time after an event whose happening is uncertain to ever occur, and the event happens, does the note thereupon become negotiable?

22. What are words of negotiability? Give them.

23. A made out his check payable to "cash." Is this negotiable?

CHAPTER FOUR.

24. What is a "judgment note"? Is it negotiable?

25. If the date is omitted, is an instrument rendered thereby non-negotiable? What is the rule with reference to ante-dating and post-dating?

26. If a check states the sum payable in writing in the body and in figures in the margin, and there is a discrepancy between the two, which governs?

CHAPTER FIVE.

27. A made a note payable to the order of B, but told B not to make use of it under any circumstances except upon a certain condition. B, in violation of this stipulation indorsed the note to C who paid value for it and took before maturity and in good faith. Is A responsible to C? Why?

28. B has a note payable to his order by A with sum in blank. He informs C that he authorized to fill in any amount up to $1000. His real authority is to fill up for not over $500. C pays B $1000 for the note which sum is thereupon filled in by B, and the note is indorsed and delivered to C. Can C hold A for $1000 on the note?

29. Give the proper form of signature for an agent to use in binding his principal.

CHAPTER SIX.

30. A, uncle of B, as a gift to B, gave B a promissory note reading to B's order payable on July 1, 1911, which was B's twenty-first birthday. When that date occurred, A informed B he would not honor the note. B brought suit. Has A any good defense? Why?

31. Is it necessary to refer to the consideration in a negotiable instrument? Are the words "value received" or their equivalent necessary?

32. A bought a lot of second hand furniture from B at an agreed price of $500 and gave B his promissory note for that sum payable in three months. This was an exorbitant price as A could have purchased its equivalent for not over $100 at any second hand furniture dealer's. A discovers that the price is excessive. Can he set up this inadequacy to defeat the note in whole or part?

33. A desired to borrow $500 from B. B was willing to loan the money to A if C would sign the note with A. C did so purely as an act of friendship, which B knew. No benefit was derived by C, nor was it expected by the parties that he should receive any of the consideration or any benefit. Can C when sued by B, set up lack of consideration? Why? What is C called?

CHAPTER SEVEN.

34. Define acceptance. May an acceptance be orally made? Must it be on the face of the bill itself?

35. A draws on B in favor of C, and C sends the bill to B for acceptance. B retains the paper and makes no reply to C. C claims that this retention amounted to an acceptance. What is the rule?

36. What is a qualified acceptance? Must the holder be content with a qualified acceptance? What is its effect upon the drawer and prior indorsers? If the acceptance names a place of payment, is this a qualified acceptance?

37. A drew a check upon the Ocean National Bank, and delivered it to the payee who procured its certification. The drawer had sufficient funds to pay the check and the amount of the check was charged off against him. Within an hour the bank suspended payment. Can the payee hold A upon this check?

CHAPTER EIGHT.

38. A, for the purpose of securing credit with C, drew a bill of exchange on B, requesting B to accept it, and informing

B that he, A, would be able to pay it when it became due, whereupon B wrote his acceptance upon the bill. What is B called? If C knew before he extended credit to A that B accepted or would accept without any benefit to him, is B liable to C?

39. In the foregoing case, if A does not pay the bill or furnish B with funds wherewith to pay it, what are B's rights?

40. What is acceptance for honor? What is essential before there can be acceptance for honor? In what manner is the acceptance for honor made?

41. What steps must be taken by a holder in order to hold his rights against an accepter for honor?

42. Define payment for honor. State the method of making payment for honor.

CHAPTER NINE.

43. Name two sorts of negotiation.

44. Define an allonge and state its purpose.

45. May an indorsement be made on a separate instrument?

46. Is it necessary to use words of negotiability in an indorsement in order to continue its negotiable character.

47. What is the rule as to partial indorsement of an instrument?

48. What is a special indorsement? Give an example.

49. What is a blank indorsement? Give an example. How may a blank indorsement be converted into a special indorsement by the indorsee or holder?

50. What is a qualified indorsement?

51. What is a restrictive indorsement? What is its purpose?

CHAPTER TEN.

52. Who is a holder in due course? Why is it important that one should be a holder in due course?

53. A makes a negotiable note to B for $100. B transfers it to C for $50. What are C's rights?

54. What constitutes one a holder in good faith? Suppose one purchases negotiable paper for a very much smaller sum than its face value. Does the fact that it is procurable at this large discount prevent the purchaser from being a holder in due course?

55. Does the fact that an instrument is overdue thereby deprive it of its negotiable character? Why is it important in buying paper to purchase it before it is overdue? When is demand paper overdue in the sense that it prevents a purchaser from being a holder in due course?

56. How can one purchase with notice of a defense good against the original party and still be a holder in due course?

57. Name the defenses which the party liable on an instrument could have made against a prior party but cannot be made against a holder in due course.

58. A made out his check to B and delivered it to B, B intending to bank it, indorsed it in blank and put it in his pocket from which it was stolen by C. C sold it to D for value. D did not know how C came by it. Assume that the check is negotiable as drawn. Can the lack of delivery to C and his theft of it be used against D by any party?

59. Name the defenses which can be set up against a holder in due course.

CHAPTER ELEVEN.

60. What is the contract of the maker of a note?

61. What is the contract of a drawer of a bill or check?

62. What is the contract of the acceptor of a bill?

63. What is the contract of an unqualified indorser? Of one who transfers without indorsement? Of one who indorses

"without recourse"? A was a minor. He made a note to B who indorsed it without recourse to C. A plead his minority. Can C hold B? Why?

64. Who is an anomalous indorser? What is his contract?

CHAPTER TWELVE.

65. Why does the law require certain formal steps to be taken to charge parties secondarily liable on a negotiable instrument?

66. If one seeks to hold the maker of a note, must he show that on the date of its maturity he presented it to the maker and demanded its payment?

67. Suppose a note is payable at a certain street address in a certain city, but the holder does not have it there for payment on that day. What effect, if any, does this have on the maker's liability?

68. At what date and hour must negotiable paper be presented to the party liable thereon in order that rights against parties secondarily liable may be saved? What is the rule where paper is payable on demand? What are days of grace? Are such days allowed in most states?

69. Where paper falls due on Sunday or a legal holiday when must it be presented? What is the rule where it falls due on Saturday?

70. How is time computed where an instrument is payable so many days or a month after sight?

71. At what place must such paper be presented? To whom?

72. When may one hold an indorser or drawer notwithstanding he makes no presentment for payment to the maker or acceptor?

73. When is presentment for acceptance necessary to hold parties secondarily liable? May presentment for acceptance be made in other cases? Why?

74. A is holder of a bill drawn upon B payable ninety days after date. A presents it for acceptance which is refused.

Must A present the bill for payment to such drawee when due in order to hold C, the drawer?

75. At what date and hour must presentment for acceptance be made? To whom must presentment be made?

76. Name the cases in which presentment for acceptance is excused or waived?

77. What is notice of dishonor? When and to whom must it be given? May it be given by mail?

78. What is protest? When must it be given? Who is authorized to make protest?

79. What must the protest contain? At what place must the protest be made?

80. What is meant by protest for better security?

81. Suppose you have a note with an indorser thereon. State all the steps necessary to hold such indorser. Suppose you have an inland bill. Name the steps necessary to hold the drawer and indorser. Suppose it is a foreign bill. Name the steps necessary to be taken.

CHAPTER THIRTEEN.

82. What is meant by discharge of negotiable paper? State the causes which will operate as discharge.

83. Does tender of payment operate as discharge of the instrument or any party thereto.

84. What is the effect of material alteration? What constitutes material alteration?

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